

So, with all this uncertainty, what should business be doing? It's not too late for companies to ensure that a contingency plan is in place in the event of a no-deal Brexit on 29 March.

Contingency planning

In the chemicals context, the key is to ensure ongoing compliance with REACH, which is effectively a 'passport' for REACH-compliant movement into and around the European Economic Area. In the event of a no-deal Brexit, the UK will implement UK-REACH.

If post Brexit a transition period until 31 December 2020 is agreed as part of a Brexit deal, then REACH-related compliance issues will be deferred in practice until that date. However a transition period cannot be assumed.

EU-REACH registration made by a UK-based company

Does your company or supply chain rely on an EU-REACH registration made by a UK-based company, for compliance?

In the event of a no-deal Brexit, UK-based REACH registrations will be invalid from 29 March. Supply chains will lose their 'passports' for free movement into and around the EU-27. Without action to keep a supply chain compliant, EU entities potentially face disruption and/or will have additional REACH compliance obligations.

Steps for EU-27 based businesses

EU-27 based businesses should be discussing with their UK suppliers how they plan to deal with this.

If the UK supplier manufactures/formulates the substance, it will be entitled to appoint an only representative (OR) in the EU-27 to register on its behalf. This will mean that companies and other EU-based customers will be treated as 'downstream users' under EU-REACH, provided that certain steps are taken. Echa has provided guidance on how UK-based registrants can transfer REACH registrations to an OR through REACH-IT.

'Steps must be taken during the Brexit window of 12-29 March'

Steps must be taken during the Brexit window of 12-29 March. This should not be left to the last minute.

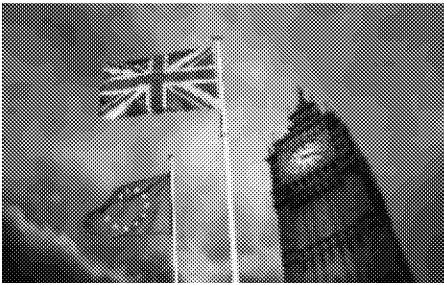
This may well mean action to transfer these registrations before it is known when (or even if) there will be a no-deal Brexit. Equally, contractual arrangements will need to be agreed with any appointed OR to ensure that the UK appointor can call for those registrations to be transferred back in appropriate circumstances.

Alternatively, companies may be able to transfer the registration to a different entity in the EU-27, but issues such as data access, customs, logistics and legal concerns can take time to resolve. Again, this should not be left to the last moment.

The bottom line is that if a UK-based supplier of key substances/products cannot sort this out with a valid EU-REACH registration, then companies will have to find a new supplier in the EU-27 or register that substance post Brexit.

Steps for UK-based companies

UK-based businesses relying on a REACH registration by an EU-27 legal entity and/or their own EU-REACH registrations also need to act.



The UK government has released the draft legislation to implement UK-REACH. This includes provisions to 'grandfather' existing EU-REACH registrations into UK-REACH, and also to ensure that UK-based businesses benefiting from an EU-27 legal entity's REACH registration (a downstream user) can continue to import those substances for two years post Brexit.

In order to benefit from these 'grandfathering' provisions, steps have to be taken to ensure ongoing compliance. For registrations, for example, limited information has to be submitted within 60 days of Brexit, and for downstream users within 180 days. And a complete registration dossier has to be submitted within two years of this.

The key impacts for UK businesses are ensuring appropriate data access and the requirement for former downstream users to submit a UK-REACH registration two years post Brexit in order to continue importing or source those substances from a UK-based registrant.

Many former downstream users will have no experience registering under REACH and so will be unfamiliar with the process. It may be, for some, that the costs of registration for the UK only are uneconomic. Unlike in the implementation of EU-REACH there are no phased deadlines based on tonnage.



Panellists at the House of Commons Environmental Audit Committee observed that the potential cost of registrations/re-registrations for UK-REACH in a no-deal Brexit scenario is likely to be significant. On the basis that data access costs will need to be replicated (as typically data access agreements limit use to EU-REACH), it was estimated at £450m on top of the £550m already invested by businesses.

This will fundamentally be a matter of commercial negotiation around whether owners are prepared to share the data and if so, on what terms, including cost. If negotiation is unsuccessful, repeat testing will be necessary, with a potentially significant impact on animal testing.

Cefic, in its guidance, put forward arguments against data owners requiring additional financial compensation for data access for the purposes of UK-REACH by those which already had access for EU-REACH. However, the trade body concludes that it is for each contracting entity to decide. It remains to be seen whether business will adopt this approach.

Equally, this does not help UK-based registrants which are downstream users, nor EU-27 based entities reliant on a UK-based REACH registration which will have to submit new EU- REACH registrations.

'Questions also remain about whether the UK-REACH IT system will be ready in time'

Questions also remain about whether the UK-REACH IT system will be ready in time. The UK Health and Safety Executive (HSE) confirmed in its additional no-deal REACH guidance that this system, mirroring EU-REACH IT, which is being built for registrations and notifications, will be operable from 29 March. However, there are indications that its development still has some way to go. It is also unclear whether it will have the same functionality as EU-REACH IT.

UK-based REACH authorisations

UK-based REACH authorisations will also be invalid from 29 March. So, where a particular use of a specific substance in the EU-27 requires an authorisation under REACH, that use will no longer be allowed.

EU-27 based businesses should be discussing with their UK suppliers how they plan to deal with this.

If the use of the authorised substance takes place in the EU-27, ask the UK entity that holds the authorisation what it plans to do. If it's a manufacturer or formulator, it may be able to appoint an OR in the EU-27.

Alternatively, the manufacturer/formulator may be able to transfer the authorisation to a different legal entity in the EU-27. This may trigger a review of the authorisation by the European Commission.

Otherwise, companies may need a new EU-27 authorisation, but that is not a quick fix. The process takes more than two years and is costly. It may mean that certain supply chains cannot continue post Brexit.

If the use of the authorised substance only takes place in the UK and an article is imported into the EU-27 then this supply chain will not require a new authorisation. Authorisation applies to the use of a substance, including where a substance subject to this is incorporated into an article. However, it does not apply to a finished article itself.

As supply chains are increasingly globalised, businesses outside the EU-27 further down the supply chain may not be aware that their product has been manufactured through the use of a UK authorisation. They should make appropriate enquiries along the supply chain, with a view to anticipating any likely issues, while acknowledging that some suppliers may be reluctant to disclose relevant information.

Steps for downstream users

UK-based businesses holding a REACH authorisation/benefiting from one held by an EU-27 entity (downstream users) also need to take steps. These authorisations will be grandfathered into UK-REACH provided that certain steps are taken, including supplying technical information relating to the authorisation to the HSE within 60 days of Brexit. UK downstream users' authorisation will only be grandfathered while the EU authorisation continues to have effect.

Steps where there is an application for an authorisation

UK-based businesses which have submitted applications for authorisation (for example, so that they can continue to use a relevant substance after the sunset date) that have not yet been decided, will only benefit from grandfathering, where

that application is at the "final decision stage" . This means, that among other things, the applicant has not received the final opinions of the Echa Committee for Risk Assessment (Rac) and Committee for Socio-Economic Analysis (Seac).

Companies obtaining articles from the UK

Often businesses are unaware that REACH also impacts articles (that is, completed products such as a shoe or chair). The main REACH obligation relates to passing information on substances of very high concern (SVHCs) along the supply chain.

In the short term, EU-27 business can rely on UK-REACH provisions to require UK suppliers to provide information. However, over time, the UK and EU list of SVHCs may change such that EU and/or UK businesses may have to undertake their own testing to meet their own compliance obligations, subject to specific contractual arrangements.

Conclusion

The key to this is understanding the supply chain and taking steps to prepare for a no-deal Brexit on 29 March. Businesses waiting until the UK's vote on 13 March may well find that in the event MPs accept a no-deal Brexit, there will be insufficient time to prepare.

The views expressed in this article are those of the expert author and are not necessarily shared by Chemical Watch

Note: Your access to this subscriber-only article is through a corporate subscription

Related Articles

- [Echa releases comprehensive Brexit chemicals instructions](#)
- [Feature: Chemical sector struggles with Brexit's UK-REACH data 'nightmare'](#)
- [UK REACH database still up in air, government admits](#)
- [EU advises REACH stakeholders on preparing for UK withdrawal](#)

Further Information:

- [Echa guidance on how to stay on the EU market after the UK's withdrawal](#)
- [UK REACH additional guidance if there is no Brexit deal](#)
- [Cefic Brexit guidance](#)

No need for UK to replicate Echa committees post Brexit – HSE

National 'world-class' experts can deliver scientific opinion

6 March 2019 / Brexit, REACH, Risk assessment, UK



Britain has "some of the best" chemical experts in the world who can advise on risk management measures without the need to replicate Echa's REACH decision-making processes, a senior official at the Health & Safety Executive (HSE) has said.

The agency's director of EU exit – chemicals Dave Bench told Chemical Watch that in a 'no-deal' scenario, mechanisms would be put in place to enable public scrutiny of UK decisions. But this would happen at a later stage, he added, "not on day one".

His comments on the sidelines of a Brexit event organised by the HSE on 6 March, follow criticism from MPs and NGOs that proposed UK legislation mirroring REACH has "stripped out" all committees and associated stakeholder engagement, which underpin authorisation and restriction decisions.

At a House of Commons debate last week, MP Mary Creagh said the draft statutory instrument (SI) for UK REACH "completely omits" the article under which Echa's Risk Assessment (Rac), Socio-economic Analysis (Seac) and Member State (MSC) Committees were created.

Article 76 is replaced with a "much weaker" duty to take relevant scientific knowledge and advice into account, Ms Creagh said, but "we will have no committees of experts, or other committees" to help the HSE. The executive is the designated UK REACH agency if Britain leaves without a deal on 29 March.

Two other MPs – Sue Hayman and Caroline Lucas – expressed similar concerns, arguing the draft SI has stripped away "layers of supporting committees" that ensure decisions are based on the best scientific advice.

"That is simply not good enough," Ms Lucas said. "We need clear and accountable processes for industry, civil society and academia to feed into this process. Decisions cannot be made in a dark room without scrutiny and oversight."

NGOs have also raised questions over accountability, with the proposed legislation giving the Secretary of State the final say on UK decisions. Michael Warhurst from NGO CHEM Trust said without stakeholder involvement the HSE could become "a secretive quango" that operates mainly with the government and industry.

The draft SI does not "explicitly prevent" the Secretary of State from overriding HSE recommendations, Ms Hayman told Parliament.

Scrutiny of opinion

Responding to the MPs' comments, junior minister Thérèse Coffey from the Department for Environment, Food & Rural Affairs (Defra) said she did not agree that the arrangements on scientific advice are in any way weak.

"I assure the House that the HSE is not limited to getting its scientific advice from the UK, or indeed, even the EU," Dr Coffey told Parliament.

According to the draft, the HSE will accept advice from the Environment Agency and the devolved environmental regulators on chemicals controls. When forming its opinions on restrictions and authorisation, it must also draw on independent expert scientific advice.

In cases where the HSE decides not to do this, for example where Echa had already published robust evidence, it must publish its justification.

Dr Coffey said the HSE would issue a statement within three months of exit about how it will comply with "all these duties". Arrangements would be in place to allow stakeholders to observe discussions and considerations of scientific advice.

Echa's loss

Meanwhile, Echa will need to fill the seats of departing UK experts at its committees. After Brexit, Britain will no longer have a vote in any of the EU's standing committees, even if it leaves with an agreed deal.

Matti Vainio, the agency's head of risk management, said the committees and Echa's enforcement forum "all have had very good expertise from the UK and will suffer".

To make up for this loss, one idea might be for smaller EU member states to nominate experts from the larger countries, Dr Vainio told Chemical Watch.

The HSE's Mr Bench said UK experts would continue to take part in the global scientific discussion on substances and risk management measures and would be able to influence the debates "building up" to EU decisions.



Clelia Oziel
EMEA correspondent

Related Articles

- [Government publishes draft UK REACH statutory instrument](#)
- [Chemical sector voices concerns at UK's no-deal Brexit guidance](#)

Further Information:

- [Transcript of House of Commons debate](#)
- [Draft statutory instrument](#)

OTHER ARTICLES

TRI Data for New England Show Improved **Environmental** Performance by Manufacturing Sector as ...

U.S. EPA.gov (press release)

BOSTON (March 5, 2019) — Today, the U.S. Environmental Protection ... New features include a new graphic on innovative use of **green chemistry** by ...

Latest TRI Data Shows Drop in **Chemical** Releases to Air and Water in Alaska - SitNews

Watchdog report indicates political appointees at EPA delayed assessments of **toxic chemicals**

ABC News

A top government watchdog reported that political appointees at the Environmental Protection Agency delayed reviews of **toxic chemicals** for months ...

Watchdog report indicates political appointees delayed **toxic chemical** assessments at EPA - myCentralOregon.com

EPA Attempts to Prohibit Stripper **Chemical-Toxic** Paint for Some—but not all—Employments - Digital Day News

Carper: GAO report details EPA's woefully inadequate implementation of TSCA reform - Smyrna-Clayton Sun Times Full Coverage

Status of EPA's Efforts to Produce Assessments and Implement the **Toxic Substances Control Act**

Government Accountability Office

The EPA has a program that assesses the safety of **chemicals** used in consumer and industrial products. In the past, the program was criticized for ...

OPCW Moves to Update Banned **Chemicals** List

Arms Control Today

Novichok-related chemicals were not listed in the treaty's Schedule 1, although the pact bans the use of any **toxic chemical** as a weapon, even if it is ...

Report: Organic Packaged Foods Only 'Clean' Option for Consumers

Environmental Working Group

"Although many consumers choose organic to avoid toxic pesticides, few know ... For those consumers seeking 'clean foods' free from **toxic chemical** ...

Agency stymied **chemical** risk program — GAO

E&E News

EPA leaders stymied research from the agency's **toxic chemical** risk assessments program, according to a Government Accountability Office report ...

Au naturale route to a good skin

The New Indian Express

I work with a research lab called **Green Chemistry**. Our main focus is to avoid paraben, sulphate and artificial chemicals. For instance, if you take ...

Standing Up

BethesdaMagazine.com

... trade association conference for chemical companies in Baltimore with her mom and others who were objecting to **toxic chemicals** in children's toys.

The bigger the better

Lab News

Aside from the initial toxicity of the plastic, microbeads can physically block ... or can act as a carrier for other **toxic compounds** that adhere to plastic.

Fermentation **Chemicals** Market is Expected to Trend in the Near Future, thereby Driving the ...
industrydailyobserver.com

Regulations formulated by agencies such as the European Commission and EPA categorically encourage **green chemistry**, which in turn can be ...

Message

From: Tanner, Barbara [Tanner.Barbara@epa.gov]
Sent: 3/27/2019 3:13:52 PM
To: Faeth, Lisa [Faeth.Lisa@epa.gov]; Anderson, Steve [Anderson.Steve@epa.gov]; Askinazi, Valerie [Askinazi.Valerie@epa.gov]; Baptist, Erik [Baptist.Erik@epa.gov]; Barkas, Jessica [barkas.jessica@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Blair, Susanna [Blair.Susanna@epa.gov]; Buster, Pamela [Buster.Pamela@epa.gov]; Canavan, Sheila [Canavan.Sheila@epa.gov]; Caraballo, Mario [Caraballo.Mario@epa.gov]; Carroll, Megan [Carroll.Megan@epa.gov]; Cherepy, Andrea [Cherepy.Andrea@epa.gov]; Christian, Myrta [Christian.Myrta@epa.gov]; Corado, Ana [Corado.Ana@epa.gov]; Davies, Clive [Davies.Clive@epa.gov]; Dekleva, Lynn [dekleva.lynn@epa.gov]; Devito, Steve [Devito.Steve@epa.gov]; Doa, Maria [Doa.Maria@epa.gov]; Drewes, Scott [Drewes.Scott@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Edelstein, Rebecca [Edelstein.Rebecca@epa.gov]; Edmonds, Marc [Edmonds.Marc@epa.gov]; Elwood, Holly [Elwood.Holly@epa.gov]; Farquharson, Chenise [Farquharson.Chenise@epa.gov]; Fehrenbacher, Cathy [Fehrenbacher.Cathy@epa.gov]; Feustel, Ingrid [feustel.ingrid@epa.gov]; Frank, Donald [Frank.Donald@epa.gov]; Gibson, Hugh [Gibson.Hugh@epa.gov]; Gimlin, Peter [Gimlin.Peter@epa.gov]; Gorder, Chris [Gorder.Chris@epa.gov]; Gordon, Brittney [Gordon.Brittney@epa.gov]; Grant, Brian [Grant.Brian@epa.gov]; Gray, Shawna [Gray.Shawna@epa.gov]; Groeneveld, Thomas [Groeneveld.Thomas@epa.gov]; Guthrie, Christina [Guthrie.Christina@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Helfgott, Daniel [Helfgott.Daniel@epa.gov]; Henry, Tala [Henry.Tala@epa.gov]; Kapust, Edna [Kapust.Edna@epa.gov]; Kemme, Sara [kemme.sara@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Krasnic, Toni [krasnic.toni@epa.gov]; Lavoie, Emma [Lavoie.Emma@epa.gov]; Lee, Mari [Lee.Mari@epa.gov]; Lee, Virginia [Lee.Virginia@epa.gov]; Leopard, Matthew (OEI) [Leopard.Matthew@epa.gov]; Liva, Aakruti [Liva.Aakruti@epa.gov]; Lobar, Bryan [Lobar.Bryan@epa.gov]; Mclean, Kevin [Mclean.Kevin@epa.gov]; Menasche, Claudia [Menasche.Claudia@epa.gov]; Morris, Jeff [Morris.Jeff@epa.gov]; Moss, Kenneth [Moss.Kenneth@epa.gov]; Mottley, Tanya [Mottley.Tanya@epa.gov]; Moyer, Adam [moyer.adam@epa.gov]; Myers, Irina [Myers.Irina@epa.gov]; Myrick, Pamela [Myrick.Pamela@epa.gov]; Nazef, Laura [Nazef.Laura@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Owen, Elise [Owen.Elise@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Passe, Loraine [Passe.Loraine@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Pratt, Johnk [Pratt.Johnk@epa.gov]; Price, Michelle [Price.Michelle@epa.gov]; Reese, Recie [Reese.Recie@epa.gov]; Reisman, Larry [Reisman.Larry@epa.gov]; Rice, Cody [Rice.Cody@epa.gov]; Richardson, Vickie [Richardson.Vickie@epa.gov]; Ross, Philip [Ross.Philip@epa.gov]; Sadowsky, Don [Sadowsky.Don@epa.gov]; Santacroce, Jeffrey [Santacroce.Jeffrey@epa.gov]; Saxton, Dion [Saxton.Dion@epa.gov]; Scarano, Louis [Scarano.Louis@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Schmit, Ryan [schmit.ryan@epa.gov]; Schweer, Greg [Schweer.Greg@epa.gov]; Scott Selken [spselken@up.com]; Scott, Elizabeth [Scott.Elizabeth@epa.gov]; Selby-Mohamadu, Yvette [Selby-Mohamadu.Yvette@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Sheehan, Eileen [Sheehan.Eileen@epa.gov]; Sherlock, Scott [Sherlock.Scott@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Sirmons, Chandler [Sirmons.Chandler@epa.gov]; Slotnick, Sue [Slotnick.Sue@epa.gov]; Smith, David G. [Smith.DavidG@epa.gov]; Smith-Seam, Rhoda [smith-seam.rhoda@epa.gov]; Stedeford, Todd [Stedeford.Todd@epa.gov]; Strauss, Linda [Strauss.Linda@epa.gov]; Symmes, Brian [Symmes.Brian@epa.gov]; Thompson, Tony [Thompson.Tony@epa.gov]; Tierney, Meghan [Tierney.Meghan@epa.gov]; Tillman, Thomas [Tillman.Thomas@epa.gov]; Tomassoni, Guy [Tomassoni.Guy@epa.gov]; Tran, Chi [Tran.Chi@epa.gov]; Turk, David [Turk.David@epa.gov]; Vendinello, Lynn [Vendinello.Lynn@epa.gov]; Wallace, Ryan [Wallace.Ryan@epa.gov]; Wheeler, Cindy [Wheeler.Cindy@epa.gov]; Widawsky, David [Widawsky.David@epa.gov]; Williams, Aresia [Williams.Aresia@epa.gov]; Williams, Bridget [Williams.Bridget@epa.gov]; Williamson, Tracy [Williamson.Tracy@epa.gov]; Wills, Jennifer [Wills.Jennifer@epa.gov]; Wise, Louise [Wise.Louise@epa.gov]; Wolf, Joel [Wolf.Joel@epa.gov]; Wright, Tracy [Wright.Tracy@epa.gov]; Yowell, John [yowell.john@epa.gov]; Tanner, Barbara [Tanner.Barbara@epa.gov]
Subject: News Articles (For EPA Distribution Only)

BNA.COM ARTICLES

Judges Pillory EPA in Decade-Long Battle Over Common Pesticide

ED_002923A_00002097-00001

Posted March 26, 2019, 10:52 PM

- Federal appeals court question EPA attorneys for 90-day response deadline in possible chlorpyrifos ban
- Groups first petitioned EPA in 2007 to ban chemical linked to neurological delays in children

Federal appeals court judges March 26 hammered the EPA on how quickly the agency could react if ordered to adopt a rule on the safety of the pesticide chlorpyrifos.

Oral arguments before an 11-judge en banc panel at the U.S. Court of Appeals for the Ninth Circuit follow a ruling of a three-judge panel of the same court last summer ordering a ban of the pesticide, which the EPA appealed.

The arguments also come a dozen years after the Natural Resources Defense Council and the Pesticide Action Network petitioned the agency to ban all uses of chlorpyrifos on food; and two years after then-EPA Administrator Scott Pruitt—in March 2017—denied the request, and the groups and seven states filed an administrative petition.

“You’ve had 10 years or more to look at this. We’ve changed administrations. We’ve changed science. How long do you need to look at this?” Judge M. Margaret McKeown asked March 26.

Chlorpyrifos, a Dow-produced chemical, is widely used on crops including almonds and soybeans, and by golf courses and greenhouses. But the pesticide also has been linked to developmental problem in children.

In August, a three-judge 9th Circuit panel had nullified the EPA’s 2017 decision to pass on making a rule, even though the rulemaking process had begun under the Obama administration, which sought to ban the chemical’s use.

The three-judge panel agreed with a dozen organizations and seven states that intervened in arguing no amount of chlorpyrifos on food could be deemed safe based on a federal standard set by the Federal Food, Drug and Cosmetics Act. The EPA sets limits, or tolerances, for pesticide residues including chlorpyrifos in food.

The EPA then petitioned for the full slate of appeals court judges to review the ruling.

It took judges several rounds of questions to get Jonathan D. Brightbill, deputy assistant attorney general representing the EPA, to confirm that the agency could respond within 90 days of a final order from the full court.

‘EPA Violated the Law’

The insecticide is made by Dow AgroSciences LLC, which now operates under the name Corteva Agriscience, FMC Corp., and Adama Agricultural Solutions Ltd. It has been linked to children’s cognitive and developmental health.

The Trump administration’s EPA allowed chlorpyrifos’ use “even though it did not and could not find it safe,” Patti Goldman, managing attorney for Earthjustice, told the court during arguments in San Francisco.

The agency had two choices—continue allowing use of chlorpyrifos in food and make a requisite safety ruling, or revoke and modify the permitted levels, Andrea Oser, representing the New York Attorney General’s office arguing for the states, told the court.

“And EPA has done neither,” Oser said.

The case is LULAC v. Pruitt, 9th Cir., No. 17-71636, oral arguments 3/26/19.

INSIDEEPA.COM ARTICLES

Stakeholders Draw Battle Lines Over TSCA, IRIS Programs On Hearing's Eve

March 26, 2019

The House science committee is holding a March 27 hearing that is expected to highlight major stakeholder divisions on whether EPA's embattled Integrated Risk Information System (IRIS) program or the agency's emerging toxics program should play the lead role assessing chemical risks.

The [hearing](#), EPA's IRIS Program: Reviewing Its Progress And Roadblocks Ahead, is expected to provide Democrats and environmentalists an opportunity to defend the IRIS program in the face of continuing attacks from industry groups and the Trump administration, whose officials are seeking to scale back its agenda and limit its regulatory application.

The March 27 hearing will likely stand in contrast to similar hearings in previous Congresses held under the gavel of former Chairman Lamar Smith (R-TX), which focused on industry concerns with IRIS' strict risk estimates.

But industry groups and their supporters are likely to continue criticizing the program for being overly conservative and are likely to champion EPA's toxics office, which is implementing the revised Toxic Substances Control Act (TSCA), as an alternate chemical assessor, though environmentalists say it has been "captured" by industry interests.

Jennifer Sass, a senior scientist with the Natural Resources Defense Council (NRDC) argues in a [March 26 blog post](#) that the IRIS program has greater credibility than the TSCA program.

"In contrast to the industry-captured TSCA program, EPA's Office of Research and Development (ORD) continues to receive favorable reviews for its implementation of chemical assessments through the [IRIS] program," she writes.

In contrast, the chemical industry is calling for further strengthening and accountability for the program, though it is stopping short of calling for abolishing the program as some conservatives have.

"We hope that the IRIS program will one day be able to produce high-quality, scientifically sound toxicity values, but there is still a great deal of work to be done to get to that point," the American Chemistry Council (ACC) says in a [March 25 blog](#). Still, ACC argues that the "IRIS program has been plagued by serious issues for years as noted on many occasions by the National Academy of Sciences (NAS), the Government Accountability Office (GAO), congressional committees ... and other stakeholders. The program's failure to address those issues means that IRIS hazard assessments cause unnecessary alarm and misstate the potential impact of a given substance on public health."

Such critiques serve as a backdrop to Trump administration efforts to sideline the program in favor of the toxics office's efforts to implement a revised TSCA program. EPA's toxics office is led by former ACC lobbyist and IRIS critic Nancy Beck, who is now the political deputy.

Formaldehyde Assessment

For example, the agency formally announced last week that it was shelving IRIS' long-running assessment of formaldehyde and would instead hand it off as an anticipated high-priority assessment under the TSCA program, which is likely to take a narrower look at potential risks.

The IRIS assessment has long drawn industry criticism, especially after a critical review of an earlier draft by NAS called for wholesale changes to the IRIS program, including more transparency and stronger causal evidence in the assessments.

In a release announcing the formaldehyde decision, toxics chief Alexandra Dunn promised that the draft IRIS assessment would be utilized by the toxics office in completing its evaluation. Dunn also sought to explain the decision, arguing that the IRIS program could not take “regulatory steps” while the toxics office can.

While a draft version of IRIS' formaldehyde assessment had reportedly been completed, the assessment was dropped from the program's agenda late last year along with a host of other pending assessments that had been in the works for years.

But a GAO report released earlier this month raised questions about EPA's priority-setting process that led it to drop formaldehyde from IRIS' agenda. In response, Democrats are seeking an ethics investigation into the top Trump research appointee's role in the IRIS prioritization process.

And a subsequent GAO report rejected arguments from EPA and continued to list both IRIS and the TSCA program as a “high risk” issue in need of senior management oversight and urged Congress and the administration to ensure the agency has “sufficient” funds to ensure their successful implementation.

In addition to shelving the IRIS assessment of formaldehyde, the administration is considering limiting the regulatory application of IRIS assessments. EPA is holding a March 27 hearing on its proposed air toxics rules for hydrochloric acid facilities, where the agency is reconsidering whether to continue using a strict Obama-era IRIS value for ethylene oxide (EtO) for regulatory purposes.

While EtO is a major risk driver for the sector, EPA is asking for comment on whether it should continue to use the EtO IRIS assessment -- challenging IRIS' longstanding role as the producer of premiere risk analyses for regulatory decision-making.

The Trump EPA has also proposed significantly reducing IRIS' budget in each of the last three budgets, though Congress did not act on the 2018 or 2019 proposals, and is not expected to act on the 2020 request. Meanwhile, the administration has proposed to increase the toxics program budget since coming into office.

Administration efforts to scale back the IRIS program are drawing strong push back from environmentalists. Even before the toxics office's announcement, the Environmental Defense Fund's Richard Denison branded EPA's dropping

formaldehyde from the IRIS program as “corrupt.” Denison pointed out that the top Trump nominee in the research office, David Dunlap, is a former Koch Industries environmental engineer whose recusal statement includes not working on formaldehyde. “Miraculously, [Dunlap's] recusal statement was dated the same day as the IRIS program outlook document,” Denison wrote in a [Feb. 14 blog post](#).

“Given the differences in credibility and scientific accountability between the TSCA and IRIS chemical assessments, it is alarming that the recent GAO investigation reported that the EPA Administrator’s office is blocking IRIS assessments, while program office leadership is pulling staff from the IRIS program into the TSCA program,” Sass writes, pointing to GAO's latest report on IRIS, released March 4. It found that 28 of 30 IRIS staff were working on TSCA assessments last fall, before the new IRIS agenda was published.

“Instead of addressing the industrial sources of its air pollution, the chemical industry and its allies at the TSCA program are attacking the IRIS assessments, scavenging off IRIS resources to staff up the industry-captured TSCA program, shifting the balance of [EPA's Science Advisory Board] from non-industry to industry members,” Sass concludes. “Under these conditions it is inevitable that chemical assessments will be weakened, regulatory safeguards will be gutted, and preventable human suffering will rise.” -- *Maria Hegstad* (mhegstad@iwpnews.com)

<https://insideepa.com/daily-news/stakeholders-draw-battle-lines-over-tsca-iris-programs-hearings-eve>

Despite Wheeler Pledge, EPA Seeks To Kill Lead Risk Reduction Program

March 25, 2019

The Trump administration is proposing to eliminate EPA's Lead Risk Reduction Program in fiscal year 2020 despite pledges from Administrator Andrew Wheeler and other top officials who said when unveiling an inter-agency lead strategy late last year that reducing children's exposures to the metal and its risks is a priority.

According to EPA's FY20 [budget justification](#), the administration is proposing to zero out the \$12.6 million Congress appropriated in FY19 for the program. The budget request says that the funding and 66 associated full-time equivalent employees “are proposed for elimination for this program in FY 2020.”

EPA explains that certifications of lead-safe practices for contractors who could disturb old lead-based paint will continue as part of EPA's toxics office's activities, while “[o]ther forms of lead exposure are addressed through other targeted programs such as lead pipe replacement with the State Revolving Funds.”

The proposal appears to undercut statements from Wheeler and other officials who have sought to demonstrate a responsibility to reduce exposures.

For example, when Wheeler and other officials unveiled the administration's [interagency lead plan](#), the administrator said that protecting people, especially the most vulnerable, is “the first and foremost responsibility of government,” and that children in many communities face significant exposures to lead through paint in housing and old pipes that deliver drinking water.

“The Federal Lead Action Plan will enhance the Trump Administration’s efforts to identify and reduce lead contamination while ensuring children impacted by lead exposure are getting the support and care they need,” he said.

The “Federal Action Plan To Reduce Childhood Lead Exposures and Associated Health Impacts” calls for four categories of actions, including reducing children's exposure to lead, identifying and helping lead-exposed children, improving communication with stakeholders, and supporting and conducting research to inform future lead reduction efforts.

In December, EPA said that it plans to issue by March 2019 an implementation plan with performance metrics for monitoring the agency's progress and demonstrating accountability for meeting the plan's goals.

At the event announcing the plan, Wheeler sought to deflect concern that it lacks new commitments to craft enforceable regulations by arguing that the agency's commitments to finalize rulemaking efforts that are already underway are “new.”

Similarly, during her tenure as regional administrator of EPA Region 1, comprising the New England states, Alexandra Dunn -- who now heads EPA's toxics office -- touted EPA's community grants and other activities targeted at reducing lead in drinking water and ensuring the contractors are using lead-safe renovation practices.

As one example, in a press release last May, EPA Region 1 touted its efforts to “reduce children’s exposure to lead paint in New Hampshire and Maine seacoast areas.” The May 2, 2018 release touted a new “initiative to improve compliance with laws that protect children from lead paint poisoning by sending certified letters this month to about 400 home renovation and painting contractors, property management companies and landlords in and around Portsmouth, N.H. and Portland, Maine areas.”

“Reducing exposure to lead is a top priority for EPA under Administrator Pruitt's leadership,” Dunn said in the 2018 release, when she was regional administrator of EPA's New England office. “Enforcing lead paint notification and worksite standards helps to level the playing field for companies complying with the law, as well as helps to provide a safer and healthier environment for children.” -- *Maria Hegstad* (mhegstad@iwpnews.com)

<https://insideepa.com/daily-news/despite-wheeler-pledge-epa-seeks-kill-lead-risk-reduction-program>

GREENWIRE ARTICLES

9th Circuit set for chlorpyrifos clash

Ellen M. Gilmer, E&E News reporter



The James R. Browning Building in San Francisco houses the 9th U.S. Circuit Court of Appeals. Library of Congress
Published: Tuesday, March 26, 2019

The Trump administration heads to federal court today to fight a 2018 ruling that required EPA to crack down on the pesticide chlorpyrifos.

The 9th U.S. Circuit Court of Appeals will hear oral arguments this evening in a highly anticipated rehearing en banc — before 11 active judges on the court.

The court is weighing whether to reverse a three-judge panel's August decision requiring EPA to ban the farm chemical on food crops. EPA science has linked the pesticide to neurological problems in children.

The 9th Circuit panel concluded the Trump administration failed to justify its 2017 decision to reject a proposed ban that public health advocates have pushed for years.

Government officials then asked the 9th Circuit to revisit the ruling and notched a notable victory in February when that request was granted (*[Greenwire](#)*, Feb. 7).

Trump-appointed Justice Department lawyer Jonathan Brightbill is arguing the case for EPA today.

The League of United Latin American Citizens and a coalition of farm, labor and environmental groups opposing EPA in the courtroom will be represented by Earthjustice lawyer Patti Goldman. New York Deputy Solicitor General Andrea Oser is representing a coalition of states pushing for a chlorpyrifos ban.

Documents obtained under the Freedom of Information Act by the Center for Biological Diversity and detailed in a *New York Times* investigation indicate the Fish and Wildlife Service found chlorpyrifos also posed jeopardy to 1,399 endangered species.

Pesticide makers and agriculture groups have argued that banning the chemical would derail many American food crops that rely on it.

The 9th Circuit will stream today's oral arguments **online**, beginning at 5:30 p.m. EDT.

<https://www.eenews.net/greenwire/2019/03/26/stories/1060129435>

Dems put spotlight on Bernhardt's schedules and meetings

Michael Doyle, E&E News reporter



Acting Interior chief David Bernhardt. Bureau of Reclamation/Flickr

Published: Tuesday, March 26, 2019

On the eve of a crucial Senate confirmation hearing, the Interior Department has turned over to a House panel thousands of pages disclosing more about acting Interior Secretary David Bernhardt's schedules and activities.

The 7,137 documents containing 26,792 pages delivered late yesterday to the Democratic-controlled House Natural Resources Committee include detailed calendars, day-ahead schedule previews and meeting proposal forms describing who has wanted to meet with Bernhardt and why.

"The operations of the Office of the Secretary and the Deputy Secretary involve compiling and managing an ever changing schedule," Cole Rojewski, director of Interior's Office of Congressional and Legislative Affairs, noted in a cover letter.

More than a simple bureaucratic shuffling, the delivery of pages that were part of 2,731 distinct documents marked the latest move in an ongoing struggle involving congressional oversight, executive branch transparency and the particulars of how Bernhardt operates.

The document delivery answered a Feb. 7 joint request from the committee's chairman, Raúl Grijalva (D-Ariz.), and the freshman chairman of the panel's Oversight and Investigations Subcommittee, T.J. Cox (D-Calif.) ([*Greenwire*](#), Feb. 8).

The House Democrats cited meetings with lobbyists that were not previously disclosed and the use of overly general terms. Between August 2017 and September 2018, for instance, Bernhardt's publicly released calendars identified 98 events simply as "external meeting."

Forty entries over the course of the year were identified only as "call" or "call time."

"The versions of your calendars that have been obtained through Freedom of Information Act requests and posted to the DOI website are missing important details," the Democrats **stated**.

Committee spokesman Adam Sarvana said today that the panel was still reviewing the newly received documents, which also included 19,982 pages dealing with Interior's review of national monuments.

Interior now posts more detailed schedules for Bernhardt online, identifying by name and organization the nongovernmental individuals with whom he has met.

Last Thursday, for instance, Bernhardt's calendar shows he met with Nature Conservancy executives Lynn Scarlett and Kameran Onley. Scarlett served in the Interior Department with Bernhardt during the George W. Bush administration.

"Frankly, I believe that all Federal public officials, including members of Congress, should publicly disclose all meetings held with individuals or parties other than government entities, as I am already committed to doing," Bernhardt wrote to Grijalva and Cox last month.

Interior delivered the documents more than a month later than the House members wanted but several days before Bernhardt's confirmation hearing to replace former Interior Secretary Ryan Zinke, to be held Thursday before the Senate Energy and Natural Resources Committee (*E&E Daily*, March 25).

The hearing will illuminate how Bernhardt's critics on and off of Capitol Hill contend the former lobbyist is too cozy with special interests, and private groups, too, have been seeking more documented insight into his day-to-day activities.

Last July, on behalf of the Western Values Project, Democracy Forward filed suit against Interior for failing to release documents in response to 10 FOIA requests for Bernhardt's official communications and other work.

"DOI's foot-dragging is particularly problematic given Acting Secretary Bernhardt's nomination to Secretary and, in advance of his confirmation hearings, his efforts to tout his commitment to agency transparency and ethical public service," the groups' attorneys wrote in a Feb. 22 court filing.

Justice Department attorneys countered in a March 12 filing that Interior had "identified over ten thousand pages of potentially responsive records," with several searches still ongoing, and that officials are "currently reviewing 500 pages per month."

<https://www.eenews.net/greenwire/2019/03/26/stories/1060129507>

CHEMICAL WATCH ARTICLES

Walmart, Amazon pull paint removers in the face of NGO pressure

26 March 2019 / Built environment, Retail, Solvents, United States, Voluntary action

Walmart and Amazon have both removed online listings for paint removal products containing methylene chloride and N-methylpyrrolidone (NMP), after pressure from the NGO Safer Chemicals Healthy Families.

Both retailers were among the more than dozen who committed to pulling the products from their shelves, following an NGO campaign focused on the hazards the two solvents posed. Walmart committed to doing so by February of this year, and Amazon by 1 March.

But as was the case during a January investigation into five other major retailers, SCHF discovered noncompliance with the commitments after these deadlines.

In the case of Walmart, SCHF and its partners identified 90 pages on Walmart.com for products that "definitely or likely contained" either methylene chloride or NMP. A visit to Walmart retail locations found two products containing methylene chloride or NMP, on shelves in Illinois and Oregon.

Meanwhile, they found 59 such products being sold through Amazon.

With respect to Walmart, SCHF said it notified the company of the violations between 11-15 March. And while it took over a week in certain cases, by 21 March all of the listings in question had been removed.

Amazon removed the listings within 48 hours of notification by the NGO, added SCHF.

This month, the US EPA issued a final rule banning methylene chloride from consumer products. A retail prohibition comes into force 180 days after the effective date of the rule.

SCHF is among the organisations, however, that have criticised the scope of the ban, saying it only covers consumer products, especially considering that many major retailers had already committed to pulling the products.

Related Articles

- [US retailer to phase out methylene chloride, NMP paint strippers](#)
- [Amazon to ban paint strippers containing methylene chloride and NMP](#)
- [Methylene chloride, NMP products remain at major US retailers](#)
- [US EPA bans methylene chloride in consumer paint removers](#)
-
- **Further Information:**
-
- [SCHF blogpost](#)

NGO study: Prop 65 leads to successful product reformulations

26 March 2019 / Confidentiality & right-to-know, Prop 65, US states

An NGO study has found that two Proposition 65 private enforcement actions resulted in significantly lowered lead content in certain products. And study co-author the Center for Environmental Health (CEH) says that this is evidence that Prop 65 litigation can prompt safer product reformulations nationwide.

California's Proposition 65, which was passed by voters in 1986, requires warning on products exposing consumers to chemicals that can cause reproductive harm or cancer. A unique aspect of the law is that it allows private persons or organisations to take legal action against alleged violators – and be awarded 25% of penalties assessed.

In the study, the CEH – a frequent plaintiff in 'private enforcement' litigation – used a proprietary dataset and one from the California Department of Public Health (CDPH) to look into the long-term impact of such enforcement. It found "dramatic reductions" in chemicals of concern in the two cases it evaluated.

Data showed, for example, that faux leather purses made with lead-containing pigments declined from 34% to 8% over the course of seven years. And online sales indicated that the reduction was nationwide, the study found.

Michael Green, CEO of CEH, said the findings "illustrate why Prop 65 has been so effective in protecting millions of consumers from harmful chemicals without imposing costs on businesses and consumers."

The threat of litigation, he continued, makes "companies respond by providing products that are safer and more environmentally friendly."

Industry, however, has raised concerns that the opportunity to win settlement fees has given rise to a 'bounty hunter' environment, where the burden of proof rests on businesses to demonstrate that a warning was not necessary for a product.

The most recent annual report from California's Office of the Attorney General shows that the total settlement payout for Prop 65 cases exceeded \$25m in 2017.

Related Articles

[Prop 65: standing the test of time?](#)

Further Information:

- [Prop 65 study](#)

2019 Global Outlook: Key GHS developments

Nhat Nguyen, Chemical Watch's chief analyst, and Cristina Garcia, regulatory and compliance analyst, discuss global developments as countries adopt the sixth or seventh edition of GHS

27 March 2019 / GHS, Global



Key Points

- US OSHA to update the Hazard Communication Standard 2012
- Asia Pacific countries lead the charge toward adopting GHS editions
- EU considers changing the CLP Regulation
- Chile to implement GHS sixth revised edition

The UN Globally Harmonized System (GHS) of classifying and labelling chemicals has been instrumental in shaping regulatory policy on chemical management across the globe. GHS addresses classification of chemicals by types of hazard and proposes harmonised hazard communication elements, including labels and safety data sheets (SDSs).

First adopted by the United Nations Economic Commission for Europe (UNECE) in 2002 and published in 2003, GHS has been accepted and implemented worldwide amid criticism that, despite its name, it is not actually harmonised. Countries can choose which sections of the GHS they wish to integrate into their regulations.

The first major wave of implementation and compliance came in 2015 when many regions – including the EU, Asia and the US – completed their implementation timelines. More countries are expected to adopt the system in 2019 aligning with either the sixth or seventh edition of GHS.

Event: UN publication of the eighth revised edition of GHS

Since its inception, the UNECE intended GHS to be revised every two years to account for changes, new memorandums of understanding and/or agreements. If the UNECE keeps to its previous schedules, the eighth revised edition should be released by mid 2019.

In December, the UNECE technical committee met to decide some of the potential changes to the eighth revised edition including:

- introduction of a category-based scheme for classification of explosives, similar to that used for other hazard classes;
- new criteria for classification of aerosols and chemicals under pressure;
- review of the viscosity criterion for classification of mixtures with the aspiration hazard;
- new examples on the labelling of small packagings; and
- new precautionary statements for medical response and a possible precautionary pictogram to give the message: "Keep out of reach of children."

Key dates

- First half of 2019 – Publication of the eighth revised edition of GHS

Event: Asia Pacific countries consider sixth or seventh edition of GHS

While many countries have met their first set of compliance dates for GHS, Asia Pacific countries are leading the charge toward adopting newer editions of GHS.

Despite having only completed its GHS implementation on 1 January 2017, Australia intends to change from the third revised edition to the sixth edition.

Allan Freeth, New Zealand's chief executive for the Environmental Protection Authority, told Chemical Watch's Regulatory Summit Asia 2018 that New Zealand will take further steps to harmonise with GHS, potentially moving to either the sixth or seventh edition. New Zealand has adopted new legislative instruments (EPA Notices) for labelling and SDSs based on the fifth revised edition of the GHS. The final decision may depend on Australia since New Zealand has a keen interest in harmonising with its closest trade partner.

The Singapore Chemical Industry Council (SCIC) is also reviewing whether to adopt the sixth or seventh edition of GHS. SCIC is spearheading chemical management and hazard communication in Singapore through the Chemical Management and GHS Hazard Communication Taskforce, which is comprised of government, industry and educational organisations. The taskforce's recommendation, once finalised, will be implemented throughout Singapore.

Japan is possibly the furthest ahead with implementation changes. Efforts are underway to revise the country's GHS standards – JIS Z 7252 for classification and JIS Z 7253 for SDSs. The standards are expected to be published in late March and will bring the country's requirements closer to the sixth revised edition of GHS. Industry will have a transition period of about three years to change labels and safety data sheets, if applicable.

Who will this impact the most?

Manufacturers, importers and traders of chemicals used in the workplace (for example, industrial chemicals).

Key dates

- Late March 2019 – Issuance of new GHS standards in Japan

Event: Alignment of Canada, the US and the EU on the seventh edition

Changes might also occur in North America and the EU. The US Occupational Safety and Health Administration (OSHA) plans to update the Hazard Communication Standard 2012 (known as HazCom 2012) in 2019.

Maureen Ruskin, deputy directorate of standards and guidance at OSHA, has told Chemical Watch that the agency's activities will centre around the seventh revised edition of GHS. The proposed rules are expected to be published for consultation in March 2019.

Under the Regulatory Cooperation Council (RCC) Joint Action Plan, Canada is committed to aligning its implementation with the US. Health Canada has published its Forward Regulatory Plan 2018-2020 setting out the agenda for the changes. The agency expects to publish regulatory changes to the Workplace Hazardous Materials Information System (WHMIS), aligning with the seventh in 2019.

The EU is also considering changing the CLP Regulation (which stands for classification, labelling and packaging), which aligns the EU system to the GHS, known as the CLP. The change, if implemented, would align the system with the sixth and seventh edition of GHS. A proposal to implement changes to the SDSs in EC Regulation No 1907/2006 (REACH) is also under development. Industry are expected to be given an 18-month transition period once the changes are finalised.

Who will this impact the most?

In Canada and the US, these changes will have an impact on manufacturers, importers and traders of industrial chemical. In Europe, the changes will affect manufacturers, importers and traders of all chemical products.

Key dates

- First half of 2019 – Changes to the CLP
- March 2019 – Publication of the proposed changes to the US requirement

Event: Latin American countries look to harmonise and align with the sixth edition

GHS activities in Latin America were bubbling in 2018 with more expected in 2019.

In Argentina, all chemicals must be classified under GHS as required under Resolution SRT 801/2015. Brazil has adopted the third revised edition of the GHS, making it mandatory in the workplace through the Regulatory Norm No 26 (NR-26) and Norm ABNT NRB 14725. However, authorities are drafting legislation to align with the sixth edition. As Brazil and Argentina have signed a memorandum of understanding on joint chemical management strategies, it is possible that Argentina may also adopt the sixth edition.

In Chile, there is a National Policy on Chemical Safety which integrates a 2017-2022 action plan including the adoption of the GHS. Chile updated its SDS standard in 2015 with Norm No 2245: 2015 *Hoja de datos de seguridad para productos químicos*, which permits companies to use GHS as the basis for classification. In November 2018, Chile released a draft Regulation on Classification, Labelling and Notification of Chemical Substances and Mixtures, which would formally implement GHS. When Chile publishes the final regulation, it will join Colombia and Costa Rica as one of the few Latin American countries to have adopted the sixth revised edition of the GHS.

Meanwhile, companies in Mexico must comply with the fifth revised edition of GHS as specified by NOM-018-STPS-2015, which became enforceable in October 2018.

Who will be impacted the most?

Manufacturers, importers and traders of chemicals used in the workplace such as industrial chemicals. Chile's implementation is similar to the EU and, as with all companies who trade chemical products including consumer products, will be affected.

Key dates

- 30 December 2022 – Relabelling of products that existed in the Costa Rican market prior to 30 December 2017
- Mid-2019 – Publication of Chile's Regulation on Classification, Labelling and Notification of Chemical Substances and Mixtures
- One-year transition period from the regulation's publication date – Chile's labels and SDSs for single substances for industrial use
- Two-year transition – Chile's labels and SDSs for single substances in non-industrial use
- Five-year transition – Chile's labels and SDSs for mixtures in industrial use
- Seven-year transition – Chile's labels and SDSs for mixtures in non-industrial use

Other potential changes in 2019 and beyond

In the summer of 2018, Israel issued a draft standard SI 2302 Part 1 on classification, labelling, and packaging of chemicals, which is based on the EU's CLP (European Regulation (EC) No 1272/2008). The draft, once finalised, will replace the previous draft standard issued in 2009. The industry will be permitted a three-year transition period to bring all chemical products into compliance. Israel, a member of OECD, has an incentive to implement GHS as the OECD announced in May 2018 that it will require all members to implement GHS.

The New Technical Regulation of Eurasian Economic Union (EAEU) on Safety of Chemical Products was adopted on 3 March 2017 by the Eurasian Economic Commission Council. It is expected to enter into force on 2 June 2021, making

GHS classification criteria and related hazard communication elements (labels and SDSs) mandatory in Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia. Russia implements GHS through its various national standards.

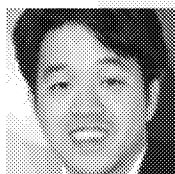
South Africa is expected to update the Occupational and Health Safety (OHS) Act and the Hazardous Chemical Substances Regulations to take account of GHS. While South Africa is not a member of the [OECD](#), it has partnered with the organisation on major programmes and initiatives. South Africa's efforts could spur other countries in the Southern African Development Community, all 16 of which have indicated that they are likely to implement GHS by 2020.

Kenyan authorities have published a [draft](#) of the country's Environmental Management and Coordination (Toxic and Hazardous Chemicals and Materials Management) Regulations 2018. If Kenya publishes the final regulation, which applies only to industrial chemicals, it will align the country with the seventh revised edition of GHS.

In [Malaysia](#), authorities are examining the regulations on classification, labeling and packaging and are looking to revise the list of pre-classified chemicals in the industry code of practice for hazard communication.

Key dates

- It is unclear when changes will be finalized



Nhat Nguyen

Chief analyst, Chemical Watch

Related Articles

- [Understanding GHS in Australia](#)
- [GHS committee to explore coordinating purple book implementation](#)
- [US hazcom standard update to align with seventh edition of GHS](#)
- [EU opens consultation on updating CLP alignment with GHS](#)
- [UN's GHS takes effect in Argentina](#)
- [GHS in Latin America: the story so far](#)
- [Developments on chemical management in Chile](#)
- [Costa Rica, Chile release details of GHS implementation](#)
- [Colombia adopts sixth edition of GHS](#)
- [Costa Rica, Chile release details of GHS implementation](#)
- [Mexico's mandatory GHS standard comes into force](#)
- [Israel amends classification of dangerous substances](#)
- [OECD makes GHS mandatory for member states](#)
- [OECD makes GHS mandatory for member states](#)
- [Malaysia to streamline chemical regulations](#)

Further Information:

- [GHS 1st edition \(2003\)](#)
- [GHS \(Rev.7\) \(2017\)](#)
- [Japan GHS Classification \(in Japanese\)](#)
- [Hazcom 2012 final rule](#)

- [Canada Forward Regulatory Plan 2018-2020](#)
- [Chile National Policy on Chemical Safety](#)

Government urges industry to be ready for UK REACH

26 March 2019 / Brexit, REACH, UK

The UK government has published further [guidance](#) to businesses on UK REACH, urging industry to "be ready" to use the new legislation in the event that the UK leaves the European Union without a deal.

The guidance, published on 25 March, explains the specific steps businesses manufacturing or importing chemicals must take to register them online under UK REACH.

A new [IT system](#) will be launched on exit day if there is no agreement on withdrawal terms. This is now set for 22 May or 12 April depending on whether Prime Minister Theresa May gets her withdrawal deal through parliament.

The Department for Environment, Food & Agriculture (Defra) said the IT system would allow:

- businesses that have existing UK-held REACH registrations to validate their registrations (known as 'grandfathering');
- businesses that import chemicals from the European Economic Area (EEA) to submit downstream user import notifications; and
- businesses to register new substance registrations or PPORD (Product and Process Orientated Research and Development) notifications.

To minimise disruption on exit day businesses should start getting ready now, Defra said.

To be ready to use UK REACH, "it's a good idea to access your Echa REACH-IT account and download all the information you hold there," it said in a statement.

"There is no guarantee that UK users will be able to retain access to Echa REACH-IT once the UK leaves the EU and you will need your registration confirmation documents and Echa decisions to comply with UK REACH."

A no-deal Brexit would mean that a range of businesses would be unable to import chemicals directly from the EEA. Sectors that rely on chemicals include motor manufacturing, pharmaceuticals, cosmetics, construction and cleaning products.

MPs are expected to make a series of indicative votes this week to pave the next steps for Brexit, with all options, including Ms May's deal, a no-deal exit, a softer Brexit with a customs union, and a second referendum, still on the table.

Echa says UK companies have [initiated](#) the transfer of nearly 3,000 REACH registrations to EU27 entities since the beginning of the year.

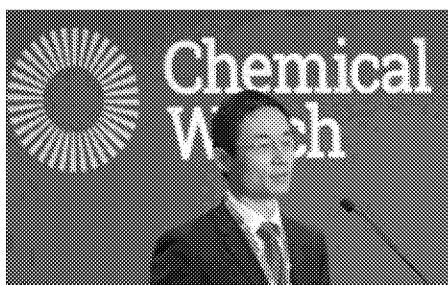
Related Articles

- [UK releases additional no-deal Brexit REACH guidance](#)
- [Brexit: government hopeful of UK REACH IT readiness](#)
- [Nearly 3,000 UK registrations initiated for EU27 transfer – Echa](#)
-
- **Further Information:**
-
- [Further guidance](#)

P&G flags pre-registration and polymer rules as K-REACH challenges

Legislation mandates more information from consumer chemical companies

27 March 2019 / Data, K-REACH, South Korea, Substance registration



Consumer chemical companies face unique challenges regarding the pre-registration requirements under K-REACH, Jeff Li, principal scientist at P&G Technology in Beijing, told delegates at the AsiaHub Summit in Washington, DC last week.

Based on P&G's experience, Mr Li said that consumer chemical companies were required to submit more information on:

- substances in products;
- raw materials, including components of mixtures; and
- intentionally-added breakdown products, such as those from soaps.

While smaller companies are able to use spreadsheets to map substances and track shipments, larger companies such as P&G require an IT system to understand "at any moment" if a substance meets registration volume levels.

Another challenge under K-REACH is that, unlike EU REACH, it requires GHS classification at the pre-registration stage. P&G does not have this information for a "big portion" of substances, Mr Li said. Companies may ask their suppliers for the information or try to find it in relevant databases, he added.

Polymer registrations

While the requirement to register polymers is not new under the law, "massive amounts" of them now qualify following amendments, Mr Li said.

K-REACH stipulates registration when a polymer's content comprises just 2% of monomers.

This means that "some very safe polymers" may not be classed as polymers of low concern because the monomers within them may contain hazardous substances. For example, the "very safe" common polymer poly(ethylene oxide) is formed from the hazardous monomer, ethylene oxide, he said.

Another "big challenge" is that companies must jointly register for the same polymer, said Mr Li. But, even among those with the same Cas number, there is significant variation and so the same data cannot often be used. Polymers with the same Cas number can vary in:

- molecular weight (MW);
- monomer reactants;
- residual products;
- end-group reactants and chemical reactions; and
- shapes and tactility, for example in crystallinity, branching and cross-linking.

This is a "tough issue" for government and industry, and the Korean Chamber of Commerce has created a polymer taskforce in response. There are also draft guidelines in circulation among a "small group" of organisations, Mr Li said.



Sunny Lee
Asia editor

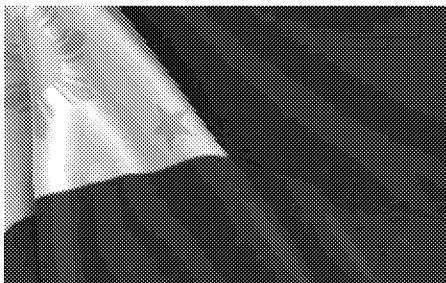
Related Articles

- [South Korea's draft implementation rules arrive for updated K-REACH](#)
- [K-REACH updated: lessons and challenges](#)

Philippines expands scope for priority control chemicals

And environment bureau reinstates requirement for Piccs certificates

27 March 2019 / Classification, Confidentiality & right-to-know, Philippines



Expanded requirements from the Environmental Management Bureau will require more companies operating in the Philippines to obtain compliance certificates for substances on the priority control list, delegates at the AsiaHub Summit in Washington, DC heard last week.

Edwin Romel N Navaluna at the EMB's chemical management bureau said that the requirement would now apply to all distributors and users, not just manufacturers and importers. All will have to comply with the certification provisions set out in DENR Administrative Order No 2007-23.

Mr Navaluna said the scope has been expanded to help the EMB "track the movement of PCL chemicals from import to the end user".

Piccs certification reinstated

The EMB has also reinstated a requirement for companies to obtain certificates that prove their substances are on the Philippine Inventory of Chemicals and Chemical Substance (Piccs) list, when importing into the country. This was dropped in 2016, but importers have continued to request official confirmation of clearance from them.

The bureau noted a "significant increase" in the number of requests following a Bureau of Customs (BOC) circular last year, which subjected all imported chemicals to mandatory inspections.

Last week, one company told Chemical Watch that its products were stopped at the ports and authorities demanded to see certification.

Because of this, the EMB says, it believes it necessary to repeal the prohibition and allow Piccs certificates, "in order to mainstream the validation process".

To obtain certificates, applicants must submit the following for evaluation:

- a notarised application form (Annex A);
- a copy of business permit;
- Information on 100% composition of mixtures, with corresponding Cas number and name of every chemical; and
- a safety data sheet (SDS).

Mr Navaluna said it will also issue Piccs certificates to companies importing chemicals that require or have requested CBI.

Chemical Control Orders

The EMB is revising the chemical control order (CCO) for mercury to bring it in line with the Minamata Convention. Mercury and its compounds have been subject to a CCO since 1997.

He said the bureau will be proposing additional CCOs for:

- arsenic;
- benzene;

- cadmium;
- chromium; and
- vinyl chloride.

It is also considering plans to require companies to obtain licences for the purchase, distribution and use of CCO chemicals.

An additional 33 chemicals have been added to the Piccs list with immediate effect. The list contains over 47,000 chemicals. The EMB is also currently reviewing a further 50 chemicals for inclusion in the PCL.



Ellen Tatham
Asia reporter

Further Information:

- [Scope for PCL certification](#)
- [Certification for PICCS](#)
- [Additional PICCS](#)

© 2019. Reprinted and distributed by kind permission of Chemical Watch

OTHER ARTICLES

Toxic chemicals can enter food through packaging. We made a list.

Environmental Defense Fund (blog)

CONEG also established the Toxics in Packaging Clearinghouse to maintain the ... Beyond PFAS: More **toxic chemicals** of concern in food packaging.

ACC/TSCA Attack on IRIS: Formaldehyde, Chloroprene, EtO

Natural Resources Defense Council

The Toxics Office is charged with implementing the **Toxic Substances** Control Act (TSCA) as well as the pesticide regulatory laws FIFRA and FQPA.

The 30: Possibly **toxic** 1,4-dioxane found in common household products

News 12 Long Island

The 30: Possibly **toxic** 1,4-dioxane found in common household products. An environmental group says the the possibly **toxic chemical** compound 1 ...

Environmental group: 65 of 80 household products contain 1,4-dioxane

News 12 Long Island

... carcinogen called 1,4-dioxane. Citizens Campaign for the Environment found the possibly **toxic chemical** compound in 65 of 80 common household ...

Paint Remover Market with Top Players: 3M, Green Products, 3X: Chemistry

Market Research Periodical

Global Paint Remover Market Professional Survey Report 2019 provides strategists, marketers and senior management with the critical information ...

Message

From: Bahadori, Tina [Bahadori.Tina@epa.gov]
Sent: 3/27/2019 9:39:31 AM
To: Dunn, Alexandra [dunn.alexandra@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]
CC: Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Hartman, Mark [Hartman.Mark@epa.gov]; Lavoie, Emma [Lavoie.Emma@epa.gov]
Subject: NCEA TSCA Risk Evaluation Support-- Weekly Update

Good Morning,

Sharing for your information:

NCEA TSCA Risk Evaluation Support 03/27 Update. Staff have reviewed the exposure, environmental, and human health hazard, characterizations in the draft hexabromocyclododecane (HBCD) risk evaluation in advance of the expected rapid turn-around review for the full risk characterization likely to occur end of April-beginning of May. A small group of ORD experts from National Center for Computational Toxicology (NCCT), National Health and Environmental Effects Research Laboratory (NHEERL), and NCEA discussed trichloroethylene (TCE) and developmental toxicity with the Office of Pollution Prevention and Toxics (OPPT)/Risk Assessment Division (RAD) last week and are preparing some written comments. NCEA teams continue to work on 1,4-dioxane cancer mode of action and weight of evidence/evidence integration and both cancer and non-cancer sections for carbon tetrachloride. Staff are also supporting methylene chloride, trichloroethylene and perchloroethylene human health characterizations. Support on the asbestos workgroup continues with NCEA staff an integral part of the human health team. Study evaluations and associated quality control continue. The schedule for the nine risk evaluations currently being drafted is: 1,4-dioxane and HBCD first going to Agency review at end of April; the six solvents going to Agency review mid-May and asbestos about a month later.

Please let Emma or me know if you have any questions or require more detailed information.

Tina

=====

Tina Bahadori, Sc.D.
Director, National Center for Environmental Assessment (EPA/ORD/NCEA)
National Program Director, Human Health Risk Assessment (EPA/ORD/HHRA)
DC phone: 202-564-7903

From: Bahadori, Tina
Sent: Wednesday, March 20, 2019 10:55 AM
To: Beck, Nancy; Dunn, Alexandra; Bertrand, Charlotte
Cc: Dunlap, David; Lavoie, Emma; Orme-Zavaleta, Jennifer; Hartman, Mark
Subject: RE: follow up from this am

Hi Again,

Emma prepares pithy weekly summaries of NCEA TSCA support for ORD leadership. I pasted it here, thinking it might be useful to you as well. Just to give you a sense of proportion, with this level of support, NCEA is at maximum saturation right now until the current activities are completed.

March 20th Update of NCEA TSCA Support. In addition to work reported last week staff are reviewing the exposure, environmental, and human health hazard, characterizations in the draft hexabromocyclododecane (HBCD) risk evaluation in advance of the expected rapid turn-around review for the full risk characterization. NCEA teams continue to work on 1,4-dioxane cancer mode of action and weight of evidence/evidence integration and both cancer and non-cancer sections for carbon tetrachloride. Staff are also supporting methylene chloride, trichloroethylene and perchloroethylene human health characterizations. Support on the asbestos workgroup continues with NCEA staff an integral part of the human health team. Study evaluations and associated quality control are also being supported. A small group of ORD experts including NCEA scientists are also preparing to discuss trichloroethylene (TCE) and developmental toxicity with Office of Pollution Prevention and Toxics (OPPT)/Risk Assessment Division (RAD) this week.

Tina

From: Bahadori, Tina

Sent: Wednesday, March 20, 2019 10:41 AM

To: Beck, Nancy <Beck.Nancy@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Cc: Dunlap, David <dunlap.david@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Hartman, Mark <Hartman.Mark@epa.gov>

Subject: RE: follow up from this am

On the matter of details, I believe the ball is in OPPT's court to start the paperwork. Perhaps that is in motion already?

On the matter of the staffing data – let's make it past the current intensity of meeting your immediate deadlines and we can have a deeper conversation on how to do the analysis to support your fee's rules decisions.

Tina

From: Beck, Nancy

Sent: Wednesday, March 20, 2019 9:57 AM

To: Bahadori, Tina <Bahadori.Tina@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Cc: Dunlap, David <dunlap.david@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Hartman, Mark <Hartman.Mark@epa.gov>

Subject: RE: follow up from this am

Thanks Tina.

Its great to hear the tracking is already happening. This will make our tracking for the fee's rule much easier. On average, if we assume 2nd quarter was about 8 weeks (since we lost days to the shut down), we have 2000 hours across 30 people. It sounded very large to me (which is great) but then I was chatting with others who are more familiar with FTE hours per person etc. Looking at the math, 2000 hours and 30 people comes out to be about 67hours/per person, which comes out to about 8hours/per person/per week. So about a day a week

for 30 people—on average. I recognize some people spend more time on TSCA support than others. Is that about right?

Having some dedicated detailee's will surely be helpful. We greatly appreciate the cooperation in that space!
Nancy

Nancy B. Beck, Ph.D., DABT
Principal Deputy Assistant Administrator, OCSPP
P: 202-564-1273
beck.nancy@epa.gov

From: Bahadori, Tina
Sent: Tuesday, March 19, 2019 11:12 AM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Cc: Dunlap, David <dunlap.david@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>
Subject: RE: follow up from this am

The majority of the NCEA scientists supporting TSCA also have primary responsibilities for the FY2019 IRIS assessments. They use project management tools to manage their own assessment responsibilities, even as they provide scientific support to TSCA. But we do track hours provided to any major Agency technical support activity, including TSCA. We are about to update the information for FY2019 second quarter. Not all the data are in, but it looks like NCEA has provided about 2000 hours of support to TSCA implementation in FY2019, across about 30 staff members.

Tina

From: Beck, Nancy
Sent: Tuesday, March 19, 2019 10:33 AM
To: Bahadori, Tina <Bahadori.Tina@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Cc: Dunlap, David <dunlap.david@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>
Subject: RE: follow up from this am

Many thanks Tina. We appreciate all the great work ORD has done and will continue to do to support our program.

These updates are very helpful. To help us understand workload, it would be super helpful to know how much of their time each of your FTE are spending on the specific projects. I know someone was able to bundle it for GAO, so updates along those lines to help us understand where we have additional brain power on each chemical and how much time they are spending would be helpful. We also need to be tracking efforts for continued implementation of our fee's rule.

Many thanks again,
Nancy

Nancy B. Beck, Ph.D., DABT
Principal Deputy Assistant Administrator, OCSPP
P: 202-564-1273
beck.nancy@epa.gov

From: Bahadori, Tina
Sent: Tuesday, March 19, 2019 10:16 AM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Cc: Dunlap, David <dunlap.david@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>
Subject: RE: follow up from this am

Hi Nancy,

Just to clarify, the memo Jennifer forwarded to you yesterday summarized the work that was done by the end of CY 2018, in response to OPPT's September request. Post shutdown, we have been in a new engagement phase, with new tasks supporting assessment development. So, there has been no hiatus in NCEA's TSCA support. We plan to provide these updates regularly to OPPT.

Looking forward to a discussion with you, Alex, and Charlotte soon.

Tina

=====

Tina Bahadori, Sc.D.
Director, National Center for Environmental Assessment (EPA/ORD/NCEA)
National Program Director, Human Health Risk Assessment (EPA/ORD/HHRA)
DC phone: 202-564-7903

From: Bahadori, Tina
Sent: Monday, March 18, 2019 5:30 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Cc: Dunlap, David <dunlap.david@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>
Subject: RE: follow up from this am

Hi Nancy,

Right now, especially without the time extension on the TSCA risk evaluations, NCEA has made the progress of these first 10 RE's an absolute priority. Emma Lavoie (copied here) and our project management lead in NCEA have been meeting regularly with Stan/Cathy and OPPT's assessment leads to infuse appropriate resources as requested. I am sure you are aware that the needs and asks from OPPT evolve almost on a daily basis – understandably, given the urgency of your current activities. Nonetheless, we have now reached a good point where our efforts are well-integrated with OPPT and the collaboration is fairly seamless. To be most effective in supporting these assessments through peer review, it would very beneficial for us to meet with Alex,

Charlotte, and you to get a better understanding of your longer-range strategy for meeting these CY2019 deadlines.

Thank you,

Tina

From: Beck, Nancy

Sent: Monday, March 18, 2019 1:50 PM

To: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Cc: Dunlap, David <dunlap.david@epa.gov>; Bahadori, Tina <Bahadori.Tina@epa.gov>

Subject: RE: follow up from this am

Many thanks Jennifer.

I think this shows us how far along the specific tasks are to completion and it seems as though we should be finding more projects for ORD staff! Lots of accomplishments.

In addition, it would help us to know how much time each of your folks are spending to provide TSCA support- eg do we have them each 10 hrs a week or is it more like 40.

Nancy B. Beck, Ph.D., DABT

Principal Deputy Assistant Administrator, OCSPP

P: 202-564-1273

beck.nancy@epa.gov

From: Orme-Zavaleta, Jennifer

Sent: Monday, March 18, 2019 1:02 PM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Cc: Dunlap, David <dunlap.david@epa.gov>; Bahadori, Tina <Bahadori.Tina@epa.gov>

Subject: follow up from this am

Hi all, and my apologies – this came to me earlier and got lost in the shuffle. See below and we can discuss further

MEMORANDUM

SUBJECT: Status of NCEA Support for OCSPP Request on TSCA Risk Evaluations

FROM: Tina Bahadori, NCEA Director
ORD National Center for Environmental Assessment (NCEA)

TO: Jennifer Orme-Zavaleta, Principal Deputy Assistant Administrator
Office of Research and Development

DATE: 4 February 2019

ORD/NCEA has completed the program support requested in September 2018 for the development of human health assessments for nine of the TSCA risk evaluations.

Specifically, we have provided:

1. Expert study quality assessment and quality control for approximately 150 animal and epidemiology studies for Perc, TCE, NMP, DCM, and HBCD;
2. During study quality assessments, provided expert feedback on the OCSPP tools for epidemiology and animal toxicology study evaluations;
3. Benchmark dose modelling and summaries for 1,4-dioxane and 1-bromopropane cancer endpoints;
4. Benchmark dose modelling and summaries for 1-bromopropane developmental toxicity endpoints;
5. PBPK modelling and summary for NMP;
6. Expert consultations on data integration for cancer for 1,4-dioxane and carbon tetrachloride;
7. Expert consultations on the incorporation of new data, e.g., Big Blue Mouse assay;
8. Expert consultations for development of technical direction for contractor support on TCE;
9. Help to refine data extraction forms and develop templates for data visualizations in tabular format and HAWC; and
10. Review of NCEA products in response to this OCSPP request through IRIS interdisciplinary workgroups for consistent expert engagement and expert opinion.

Most of this support was completed in December 2018. Several of the original requests, not listed here, did not need extensive assistance due to timing or further development of the evaluations after staff level discussions, e.g., data integration for some chemicals. Requests related to fate-exposure support are being led by ORD/NERL.

Other ongoing efforts:

1. Additional request for PBPK modelling scenarios for NMP that was ongoing prior to the government shut-down and will be completed in early March 2019;
2. NCEA asbestos experts' continued support for the asbestos evaluation via the asbestos human health sub-workgroup;
3. NCEA experts' support for the TSCA Tiger Teams for pre-prioritization process development and for alternatives to animal testing.

NCEA's TSCA support is being managed and documented in the [SharePoint site](#) developed specifically for this effort and shared with OPPT/RAD. Attached is a snapshot from the Project Management Tasks page that also lists the assessment staff assigned to each activity. It does not include other oversight and coordination support/resources provided programmatically and managerially across IRIS and NCEA.

March 13 update:

NCEA TSCA Support. On March 14th, the first drafts of 1,4-dioxane and hexabromocyclodecane (HBCD) risk evaluations are due. Additionally, NCEA teams have begun working on 1,4-dioxane cancer mode of action and weight of evidence/evidence integration and both cancer and non-cancer sections for carbon tetrachloride. Staff are also supporting trichloroethylene and perchloroethylene, specifically supporting development of direction for meta-analyses of epidemiology data. Support on the asbestos workgroup continues with NCEA staff an integral part of the human health team.

Please let me know if you need more detailed information.

=====

Tina Bahadori, Sc.D.
Director, National Center for Environmental Assessment (EPA/ORD/NCEA)
National Program Director, Human Health Risk Assessment (EPA/ORD/HHRA)
RRB Room 71210; Telephone: 202-564-7903; Mobile: 202-680-8771

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
Office of Research and Development
US Environmental Protection Agency
Cell 919-699-1564
DC 202-564-6620
RTP 919-541-2283

Message

From: Mack, Sara [mack.sara@epa.gov]
Sent: 4/15/2019 8:45:33 PM
To: OPP AD Managers [OPP_AD_Managers@epa.gov]; OPP BEAD Managers [OPP_BEAD_Managers@epa.gov]; OPP Deputy & Associate Directors [OPP_Deputy_&_Associate_Directors@epa.gov]; OPP Division Directors [OPP_Division_Directors@epa.gov]; OPP EFED Managers [OPP_EFED_Managers@epa.gov]; OPP FEAD [OPP_FEAD@epa.gov]; OPP HED Managers [OPP_HED_Managers@epa.gov]; OPP IO [OPP_IO@epa.gov]; OPP PRD Managers [OPP_PRD_Managers@epa.gov]; OPP RD Managers [OPP_RD_Managers@epa.gov]; Rust, Mary [Rust.Mary@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; OPPT IO Managers [OPPT_IO_Managers@epa.gov]; OPPT CCD Managers [OPPT_CCD_Managers@epa.gov]; OPPT CESSD Managers [OPPT_CESSD_Managers@epa.gov]; OPPT EAD Managers [OPPT_EAD_Managers@epa.gov]; OPPT IMD Managers [OPPT_IMD_Managers@epa.gov]; OPPT NPCD Managers [OPPT_NPCD_Managers@epa.gov]; OPPT RAD Managers [OPPT_RAD_Managers@epa.gov]; OPPT TRI Managers [OPPT_TRI_MANAGERS@epa.gov]; OSCP Managers [OSCP_Managers@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Baptist, Erik [Baptist.Erik@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Strauss, Linda [Strauss.Linda@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Keller, Kaitlin [keller.kaitlin@epa.gov]; Tyler, Tom [Tyler.Tom@epa.gov]
Subject: OPPT/OPP/OCPP Clips 4/15

OPPT/OPP/OCPP Clips

April 15, 2019

Formaldehyde

[CBS: Senator decries “poisons” as unregulated chemicals in cosmetics draw scrutiny](#)

Insecticides

[Mymotherlode.com: Unintended Consequences Of Insecticides](#)

Lead

[Environmental Defense Fund: Latest available national data shows increase in blood lead levels for at least 2 million kids](#)

PFAS

[Daily News-Miner: State welcomes federal PFAS action plan](#)

[Seacoastonline.com: Senator looks to stop spread of PFAS pollution](#)

[WSKG: PA To Begin Statewide Sampling For Six PFAS Chemicals](#)

Toxics

[Chemical Watch; NGO Platform: Regulating substances as groups](#)

[E&E News: Appeals court upholds fines for selling toxic buildings](#)

[The Heartland Institute: Air Emissions, Toxic Releases Reduced, EPA Reports](#)

TSCA

[Chemical Watch: EPA Publishes PMN receipts for November, December, January](#)

[Mondaqu.com: United States: U.S. EPA Takes Action Under TSCA Identifying Chemicals For Agency Scrutiny](#)

[The National Law Review: EPA Proposes TSCA CDR Revisions and Update to Small Manufacturer Definition for TSCA Section 8\(a\)](#)

Formaldehyde

CBS

Senator decries “poisons” as unregulated chemicals in cosmetics draw scrutiny

<https://www.cbsnews.com/news/cosmetics-unregulated-chemicals-lead-to-a-clean-beauty-movement/>

Staff

Posted: 8:02am, April 15, 2019

The choices are endless: products promise bold-colored lips, eyes that pop, softer skin or shinier hair. But it's what is in many of those products that may be less appealing – thousands of chemicals, including lead, phthalates and formaldehyde, chemicals experts say are putting consumers health at risk.

According to the Environmental Working Group, women put an average of 168 chemicals on their face and body before they even walk out of the door; men put on an average of 85 chemicals. Studies show some of those chemicals have been linked to health problems, including cancer and infertility.

A new bill in Congress aims to protect people from potentially dangerous chemicals found in everyday beauty products.

Beautycounter CEO Gregg Renfrew says consumers won't find potentially dangerous chemicals in its products. "I think consumers want to know what's in their products; they want to know, are these ingredients safe for their health? They want complete and utter transparency, and that is forcing the entire industry to change."

Renfrew wants to lead a "clean beauty" movement by creating traditional products without traditional and often toxic ingredients, starting with a "never list" – more than 1,500 chemicals they say they'll never use in their products. Chemicals like:

- **Retinol**, used in many sunscreens and anti-aging products, which may damage DNA and cause skin tumors;
- **Formaldehyde**, a preservative in some shampoos and body washes that can cause cancer; and
- **Parabens**, preservatives used to prevent bacteria and mold in some face cleansers and lotions, but shown to disrupt important hormones in the body.

Renfrew said, "We felt like there were no rules, and so we had to create the rules. There was no one in the United States telling us what safe was, and there was no one holding us accountable."

"Cosmetic companies can put virtually anything in personal care products, and there's very little that the FDA can do to stop that," said consumer advocate Scott Faber of the Environmental Working Group. He said that's because it has been 80 years since a cosmetic bill was passed.

Faber said cosmetic companies have fought stricter regulations: "Virtually every year from 1950 until 2018, Congress has tried to give FDA these basic powers, and they've been blocked."

The industry group Personal Care Product Council refuted this, saying for years they have worked with members of Congress and others "to create a more contemporary regulatory system" nationwide, and say they are committed to reform.

But in the European Union, some 1,500 chemicals are banned or tightly regulated. In the U.S.? Just 11 chemicals are banned – the last one, nearly 30 years ago.

So, companies like Beautycounter say they aren't waiting for U.S. laws to catch up.

Chief product developer Michael McGeever showed correspondent Anna Werner their products, made without those listed chemicals, like carbon black, a very dense black pigment traditionally used in mascaras, that has known carcinogenic properties.

And then there are lipsticks, which McGeever said are often made with petroleum and plastic. "What you really want are food grade ingredients, things that are designed to be ingested," he said.

Warner asked, "What are some of the things that I might be eating in a traditional lipstick?"

"Copolymers," he replied, "and those are basically made of acrylics."

The company wants to change the politics of beauty along with the products, by lobbying in D.C.

Democratic Senator Dianne Feinstein is co-sponsoring the bill that would give the FDA expanded authority to regulate chemicals in cosmetics. "Companies have a lot of clout and I think they have to be mobilized," she said. "What you put onto your skin seeps into your body – they're poisons."

Under the Personal Care Product Safety Act, a company would be required to report consumer complaints to the FDA; it would allow the FDA to recall products; and would require them to review five chemicals each year for safety.

Some big names in the beauty industry, including L'Oréal, Revlon and Estée Lauder, have publicly signed on, but Feinstein knows she faces a battle. "I will do everything I can to see that people are responsible for the products they put on the open market," she said.

If the bill does pass, screening five chemicals yearly still falls short of many other countries, but Faber says the FDA is reviewing zero chemicals now, so five is better than none.

Insecticides

Mymotherlode.com

Unintended Consequences Of Insecticides

<https://www.mymotherlode.com/news/local/624653/unintended-consequences-of-insecticides.html>

Rebecca Miller-Cripps

Posted: 8:30am, April 14, 2019

"Unintended consequences" – those situations where we try to create good and the outcome is worse. Recently, my cat required a visit to the vet and, after tests, cultures, repeated visits, and antibiotic injections, the diagnosis was an infection secondary to flea bites. FLEAS??? We've NEVER had fleas!!

The recommendation is once-a-month flea treatment. Fipronil, the active ingredient in Frontline and other flea protection products, is a broad-spectrum insecticide in the phenylpyrazole family. It targets a specific central nervous system access channel in insects that does not exist in mammals. Fipronil is used by pest applicators in a formulation known as Termidor to treat ants, cockroaches, termites and FLEAS.

However, according to the California Department of Pesticide Regulation, the application of fipronil applied by licensed pest applicators increased from 300 kg in 2003 to 28,785 kg in 2011. According to sampling done by University of California researchers (<https://pubs.acs.org/doi/pdf/10.1021/bk-2014-1168.ch001>), fipronil could be found in almost all samples of urban water runoff in Southern California and Sacramento.

The University of California Integrated Pest Management program [here](#), lists fipronil as HIGHLY TOXIC to bees and HIGHLY TOXIC to aquatic wildlife. Concerns over environmental impacts from fipronil surface water contamination have resulted in [new labels](#) for the pesticide. Applications are now prohibited between November 1st and February 28th during California's rainy season.

Vectra, a flea treatment for dogs, lists dinotefuran, a neonicotinoid ("neo-nic") insecticide that has been implicated in bee colony collapse disorder. Permethrin, the largest ingredient by percentage, is a synthetic insecticide that is highly toxic to fish, other aquatic creatures and bees. In addition, the active ingredients in Vectra are so poisonous to cats that a cat should not be allowed around a dog treated with Vectra until the treatment has dried for 24 hours!

These pesticides are easy to use. Just put a few drops on your pet's back and throw the applicator tube in the trash. The unintended consequence of our love affair with easy solutions is the inadvertent contamination of our surface waters, the disappearance of bees and the poisoning of water-dwelling animals and insects.

Integrated pest management (<http://ipm.ucanr.edu/index.html>) is the practice of using the least-invasive and least-poisonous method of pest control possible. In our house, consistent vacuuming, weekly laundering of pet bedding (hot water/hot drier) and a weekly cat rubdown with a dilute vinegar solution did the trick.

Rebecca Miller-Cripps is a University of California Cooperative Extension Master Gardener of Tuolumne County who has decided to treat for pests in non-toxic ways.

UCCE Master Gardeners of Tuolumne and Calaveras Counties can answer home gardening questions. Call 209-533-5912 or go to: <http://ucanr.edu/survey/survey.cfm?surveynumber=7269> to fill out our easy-to-use problem questionnaire. Check out our website at: http://cecentralsierra.ucanr.edu/Master_Gardeners/ You can also find us on Facebook at <https://www.facebook.com/MasterGardenersTuolCo/>

For more helpful Master Gardener articles view our [archive here](#) located in the Real Estate Section with other home improvement, home finance and other informative real estate articles [updated weekly her](#)

Lead

Environmental Defense Fund

Latest available national data shows increase in blood lead levels for at least 2 million kids

<http://blogs.edf.org/health/2019/04/15/recent-data-concerning-lead-exposure-lessons/>

Tom Nelter

Posted: April 15, 2019

In February, the Centers for Disease Control and Prevention (CDC) released a [report](#) summarizing the biomonitoring data from its National Health and Nutrition Evaluation System (NHANES). Given EDF's focus on protecting children from lead exposure, we went straight to the most recent blood lead monitoring results. The results are disturbing. As shown in Figure 1 below, after years of progress, in 2015-16 the blood lead levels (BLLs) of more than 2 million young children^[1] increased:

- *Average child BLL:* 48% BLL decrease from 2007-8 to 2013-14 but only a 3% decrease in 2015-16.
- *75th percentile BLL (75% of children are below this level):* 51% decrease from 2007-8 to 2013-14 but a 2% increase in 2015-16.
- *90th percentile BLL:* 51% decrease from 2007-8 to 2013-14 but an 18% increase in 2015-16.
- *95th percentile BLL:* 45% decrease from 2007-8 to 2013-14 but a 23% increase in 2015-16.

As with the smaller uptick in 2007-08 (which may have been related to the housing crises), it may only be short-term setback, nonetheless it bears careful examination.

Even more disturbing is the Trump Administration's response to this information. The Administration:

- Ignored the data in the rosy picture of progress it painted in its recent Lead Action Plan; and
- Appears to be repeating mistakes of the past by proposing to slash CDC's childhood lead poisoning prevention budget in half.

Why is the NHANES data important?

NHANES is an ongoing survey assessing the health and nutritional status of a nationally representative sample of about 8,000 children and adults in the United States. The survey includes a biomonitoring study of blood and urine samples to provide national estimates of the population's exposure to more than 300 chemicals that may result from environmental exposures.

CDC uses the blood lead levels from about 1,000 one-to-five year old children tested every two years to track progress in reducing blood lead levels. The agency's childhood lead poisoning prevention program (CLPPP) uses the data to adjust federal priorities and identify potential problems. The data also serves as a benchmark that CDC and other federal agencies use to measure progress toward their shared goal of eliminating elevated blood lead levels in children.

Administration ignored the data in its recent Lead Action Plan and EPA's Status Report

On December 20, 2018, days before the shutdown, the 17 agencies that make up the President's Task Force on Environmental Health Risks and Safety Risks to Children released the "Federal Action Plan to Reduce Childhood Lead Exposure and Associated Health Impacts." The Administrator of the Environmental Protection Agency (EPA) and the Secretary of the Department of Health and Human Services (HHS) chair the Task Force. In our blog, we described the Plan as a "missed opportunity to protect kids from lead" because it fell far short of the promises made, lacked clear goals and objectives, and did not address funding needs.

The Plan painted a rosy picture of the progress made in reducing children's exposure to lead. It described the average blood lead levels dropping twenty-fold and the 95th percentile levels dropping 12-fold from 1976-80 to 2013-14. We thought it was odd that the report did not include the NHANES data from 2015-16 — which were publicly available.

But the failure to consider the disturbing data continued when EPA released its "Implementation Status Report" on April 1 touting its accomplishments in reducing children's exposure to lead. The report makes no mention of the NHANES results for 2015-16 even though the agency had the data and could point to the February CDC report.

Repeating past mistakes by proposing to slash CDC's childhood lead poisoning prevention grants

While there's no way to know for sure why we saw this reversal on blood lead levels in 2015-16, we believe that the budget cuts to CDC's CLPPP from 2012 to 2014 under the Obama Administration may have played a major role. These cuts eliminated grants to state and local health department programs and left only enough funds for CDC to serve as a caretaker.

Though the grants of about \$32 million a year were a small proportion of CDC's annual budget of \$11.2 billion, they were critical to support programs across the country. As the grants ended, state and local lead poisoning prevention programs started shutting down or drastically reducing their work. This was the case in Michigan and likely explained in part why the state health department was slow to react to the tragedy in Flint, where it was left to Dr. Mona Hanna-Attisha, a pediatrician at a local clinic, to recognize the problem. Only a few states, including New York, had sufficient other sources of funds to continue efforts, albeit in a scaled down manner.

As shown in Table 1, in 2014, Congress restored the CDC CLPPP funding. While state and local programs ramped up their efforts, there is no question that momentum was lost when the funding was cut. And staff hiring was slow.

Table 1: CDC's Childhood Lead Poisoning Prevention Budget – Requested and Appropriated

Federal Fiscal Year	Administration Request	Congress Appropriated
FY2011	\$30.7 million*	\$35.0 million
FY2012	\$2.0 million*	\$2.5 million

Federal Fiscal Year	Administration Request	Congress Appropriated
FY2013	\$2.0 million*	\$2.3 million
FY2014	\$5.0 million*	\$28.5 million
FY2015	\$28.5 million*	\$28.5 million
FY2016	\$28.5 million*	\$34.0 million
FY2017	\$31.5 million*	\$34.0 million
FY2018	\$17 million	\$34.9 million
FY2019	\$17 million	\$35.0 million
FY2020	\$17 million	

* indicates Obama Administration.

The Obama Administration's cuts to CDC CLPPP budget were a mistake that took years for local and state programs to recover from. The cuts may also be responsible for the reversal in the NHANES data. Congress should never have acquiesced, but in the budget cutting frenzy of those years, they agreed. As a result, our country lost one of its most valuable tools to ensure children at high-risk for lead exposure are identified and protected and to spot emerging regional or local problems.

With the NHANES data readily available, we expected that the Trump Administration would not make the same mistake. However, in its proposed 2020 budget for CDC, the Trump Administration once again asked Congress to slash CDC's CLPPP from its current \$35 million to \$17 million with grants to state and local health departments bearing almost all of the cut. In the proposed budgets for the prior two years, the Trump Administration proposed similar cuts, and Congress ignored the request and kept funding relatively steady. We hope that it will do the same for the current round of appropriations.

Progress takes vigilance to protect kids from lead

As we noted two years ago in a blog on the Administration's proposed budget cuts, as long as children live in homes with lead-based paint and lead pipes, progress takes vigilance and an ongoing investment in programs that protect children. We can't afford to let children's lead exposure increase — we know the consequences.

[1] There are 20 million 1-5 year old children. 10% of these are in the 90th percentile.

PFAS

Daily News-Miner

State welcomes federal PFAS action plan

http://www.newsminer.com/opinion/community_perspectives/state-welcomes-federal-pfas-action-plan/article_54650340-5f27-11e9-95ac-7fe474fe7f65.html

Jason Brune, John MacKinnon

Posted: April 15, 2019

The Alaska Department of Environmental Conservation and Alaska Department of Transportation, in partnership with the Alaska Department of Health and Social Services, have been working on the identification of and response to sites contaminated with PFAS chemicals. We are very pleased that the U.S. Environmental Protection Agency has recently announced a PFAS Action Plan, which includes a commitment by EPA to make a regulatory determination within the year about whether to establish a maximum contamination level for drinking water for the PFAS chemicals PFOA and PFOS.

PFAS are chemicals that have been used since the 1950s in a wide range of consumer and industrial products. A PFAS-based product known as aqueous film forming foam puts out petroleum and chemical fires far more safely and effectively than water, leading the Federal Aviation Administration to require its use for fires and regular drills at airports across the country, including 23 state-owned airports in Alaska. Regular equipment testing is required and DOT

will use this product for responding to real fires, but foam will not be discharged into the environment unless necessary to save lives during an actual aircraft emergency.

Recent studies have shown that PFAS may adversely impact human health, but the exact effects and at what levels of exposure are not fully known. This makes it difficult when PFAS is found in soil, groundwater or drinking water wells. Is any contamination harmful or is there a level at which we should be concerned and take action? For other regulated drinking water contaminants, the EPA has set maximum contamination levels, but it has not done so for PFAS. Rather than wait, DEC and DOT pressed forward to protect the health of Alaskans. The agencies undertook a risk-based review of the state owned airports in Alaska, identifying sites where runoff of the foam could have impacted nearby drinking water wells. To date, well-users in Fairbanks, North Pole, King Salmon, Dillingham and Gustavus have been provided with alternative drinking water based on test results.

States have responded in different ways to the PFAS issue, with most choosing to do nothing. Some, including Alaska in 2016, took regulatory action to set cleanup levels. In August 2018, DEC added three additional PFAS compounds in a technical memo to create a DEC action level and began promulgating new regulations based on this change. During the public comment period for the draft regulations, DEC received comments across the spectrum, including comments strongly urging the department to leave the 2016 regulations in place and postpone setting revised cleanup levels until better toxicity data and EPA standards are available.

EPA's recent announcement that it would take the lead on this important issue is welcomed. It will bring much-needed consistency as a national strategy for addressing the health risks of PFAS contamination is developed. The EPA will use its team of scientists, toxicologists and other experts to study PFAS when setting a maximum contamination level. These experts will take into account the contribution from other exposures such as those from stain-resistant carpeting, waterproof outdoor gear and food wrappers, and nonstick cookware. When a maximum contamination level is set by the EPA, states, including Alaska, would be required to adopt it.

Given EPA's forthcoming efforts, DEC has placed its draft regulations on hold. We will continue to voluntarily test according to the EPA's lifetime health advisory level of 70 parts per trillion of PFOS and PFOA when addressing contaminated sites, as these are the two most-studied PFAS compounds. DEC and DOT will be proactive and continue to sample water in other communities near state-owned airports to determine whether drinking water has been impacted and to provide alternative drinking water as a precaution. DEC will continue to require other responsible parties to test for PFAS and provide alternative drinking water as a precaution as well.

We will actively participate in EPA's process and closely monitor future toxicology and epidemiology studies on PFAS. In the meantime, both agencies have posted information about PFAS on our respective department websites. We encourage those who have questions regarding PFAS and the state's response to visit bit.ly/2lmh01V and bit.ly/2KD0D3i.

Jason Brune is the commissioner of the Alaska Department of Environmental Conservation. John MacKinnon is the commissioner of the Alaska Department of Transportation and Public Facilities.

Seacoastonline.com

Senator looks to stop spread of PFAS pollution

<https://www.seacoastonline.com/news/20190413/senator-looks-to-stop-spread-of-pfas-pollution>

Alex LaCasse

Posted: 5:29pm, April 13, 2019

RYE -- As the nation learns more about possible health threats associated with PFAS exposure, Seacoast activists are continuing their push for the development of a cohesive strategy for limiting their spread.

The issues surrounding PFAS contamination on the Seacoast are well documented with multiple locations where groundwater has higher concentrations above the Environmental Protection Agency's advisory levels. Among them include Pease International Tradeport, Coakley landfill, groundwater near Hampton's closed landfill and most recently a public well in Stratham.

Many PFAS chemicals such as PFOA and PFOS are suspected carcinogens.

The EPA's health advisory limit is 70 parts per trillion, but some policy makers have advocated for the state Department of Environmental Services to lower the standards in drinking water for PFAS concentrations as several other states have done, like Vermont at 20 ppt and New Jersey at 14 ppt.

Meanwhile, State Sen. Tom Sherman, D-Rye, said there is one largely unregulated and unexplored area absent from the PFAS discussion. Sherman said fill dirt brought in for new subdivisions and water sources landscaping companies are drawing from are untested for PFAS chemicals. He said he has heard anecdotally from Rye residents that they have witnessed landscapers drawing water to be used to hydroseed clients' lawns from area rivers and streams, and feared they could be using water from sources with high levels of PFAS concentrations, such as Berry's Brook in Rye.

"This all comes at a cost to municipalities on how much they want to balance public health with the costs of doing all the testing. The liability the state will be confronting from PFAS chemicals is massive," Sherman said. "This responsibility falls on the manufacturers who disseminated these chemicals knowing they were toxic and it shouldn't be taxpayers who are left to pay for the clean up."

Former state Rep. Mindi Messmer, an environmental scientist and co-founder of New Hampshire Safe Water Alliance, said the biggest concern for PFAS exposure still comes from runoff from landfills, such as Coakley, into surface water supplies and also from PFAS chemicals' presence in biosolids, which get turned into compost material and spread over agricultural lands.

"There are 300 landfills in the state and only eight have liners under them. There's a lot that needs to be addressed in a holistic approach," said Messmer, who is also a member of the state Commission on the Seacoast Cancer Cluster Investigation.

"(In this scenario) it's something that should be very easy to stop the spread of: Landscapers need to stop using contaminated water if that's what they're doing unknowingly," she said, but added, "it's not at the top of my list of the biggest concerns for PFAS contamination."

The public comment for DES review of the maximum contamination level (MCL) for drinking water standards ended Friday. DES spokesman Jim Martin said the department is investigating the possibilities of PFAS spreading through landscaping projects. However, he added, DES's immediate concern is finalizing the drinking water standards and it hopes to present the recommendations by June to the Joint Legislative Committee on Administrative Rules for final adoption.

The state's current MCL for drinking water is 70 ppt for PFOA and PFAS.

"Whatever the new drinking water standard becomes, it would become the new ambient groundwater standard for the cleanup purposes of PFOA, PFOS, PFNA and PFHxS," Martin said.

Sherman said he primarily agreed with Messmer on the hierarchy the exposure threats posed by different PFAS sources, but while the state finalizes its standards, municipalities could be working to enact ordinances to regulate the use of surface water and fill dirt so they are tested before being brought to a jobsite.

Sherman's Senate Bill 287, which would lower the MCL for PFAS chemicals in drinking water to 20 ppt has been tabled until DES returns with its new suggested drinking water standard.

"These are the smaller uses of PFAS in our everyday lives we don't think about," he said. "(Hydroseeding and fill dirt) are not the highest priority, but they're part of the package."

PA To Begin Statewide Sampling For Six PFAS Chemicals

<https://wskg.org/news/pa-to-begin-statewide-sampling-for-six-pfas-chemicals/>

Jon Hurdle

Posted: April 15, 2019

Pennsylvania environmental officials said on Friday they will soon begin testing for toxic PFAS chemicals in public water systems near likely sources of contamination including military bases, landfills and factories.

The Department of Environmental Protection said it will sample more than 300 water systems starting in May in a program that is due to last a year.

In a 66-page [description of its sampling plan](#), the DEP's Bureau of Safe Drinking Water said it aimed to identify known location and potential source of PFAS contamination across the state, assess the risk to drinking water sources, and select public water systems as a control group.

The bureau said it will test for six PFAS chemicals including PFOA and PFOS. It did not name specific locations for sampling but published state maps showing potential water sources for testing, and other places including industrial sites and airports. The map of potential water sources shows a concentration of sites in southeastern Pennsylvania including Lancaster, Berks, Lehigh, Chester, Montgomery, Bucks, Philadelphia and Delaware counties.

PFAS chemicals have been found in the blood serum of 97 percent of the U.S. population, the plan description said, and in 38 U.S. states including Pennsylvania, although there is "limited occurrence data" in Pennsylvania.

The \$250,000 initiative follows Pennsylvania's announcement in February that it will begin to set its [own health limits](#) for PFOA and PFOS. The state announced its plan the day after the U.S. Environmental Protection Agency did not commit to setting national limits as part of a long-awaited "Action Plan" to curb the chemicals.

"DEP will not hesitate to step up when the federal government fails to," DEP Secretary Patrick McDonnell said in a statement.

In the absence of federal regulation, and amid rising public concern about the chemicals' risk to public health, some states have set their own strict limits on the most commonly found PFAS chemicals. New Jersey last September became the first state to regulate PFNA, and has recently adopted tough standards on PFOA and PFOS.

Pennsylvania does not set its own limits for the chemicals — which are linked to health conditions including cancer, low birth weights, and elevated cholesterol — but relies on an EPA lifetime health advisory of 70 parts per trillion (ppt) for PFOS and PFOA combined, a level that advocates say is much too lax to protect public health.

On April 15, the Wolf Administration is due to hold the latest public meeting of its PFAS Action Team, a panel of state officials who are charged with investigating the contamination and recommending cleanup strategies.

Some PFAS chemicals were used in consumer products like nonstick cookware and flame-retardant fabrics, starting in the 1940s. Although they are no longer made by U.S. manufacturers, they persist in many public and private water sources because they don't break down in the environment.

The chemicals have also been used for decades in firefighting foam on military bases such as those near the eastern Pennsylvania town of Horsham, where water systems have been contaminated by PFAS chemicals. Local authorities there have taken their own measures to remove PFAS from water supplies, but local people are still concerned that the bases remain a source of contamination for groundwater.

In January, the Navy canceled a plan to ship 4,500 tons of PFAS-contaminated soil from the former air station at Willow Grove near Horsham to a landfill in southern New Jersey. The landfill dropped its agreement to take the soil following media reports on the plan.

In 2013-15, the EPA tested for six PFAS chemicals in Pennsylvania as part of a national monitoring program. That sampling included Pittsburgh and Philadelphia, both of which were found to contain PFOA and PFOS below the EPA's 70 ppt level.

Toxics

Chemical Watch

NGO Platform: Regulating substances as groups

<https://chemicalwatch.com/76348/ngo-platform-regulating-substances-as-groups>

Ninja Reineke

Posted: April 15, 2019

Dr Ninja Reineke, head of science at CHEM Trust, discusses opportunities for more effective chemicals risk management. Dr Reineke will address this issue at the Helsinki Chemicals Forum 23-24 May as part of a high-level panel debate.

The history of chemical regulation is full of examples of 'too little, too late'.

The UN's Global Chemical Outlook II [report](#) highlighted that the goal to minimise adverse impacts on human health and the environment from chemicals by 2020 will not be reached.

The very strong conclusion is: "business as usual is therefore not an option." This calls for faster and more determined action and an acceleration of measures to control the impacts from harmful chemicals. Currently it can easily take over a decade from the first evidence of harm to restricting problematic uses.

The task is not small. In Europe alone, more than 22,000 chemicals produced and imported over 1 tonne per year are registered for use. REACH has put in place some new restrictions and ended the use of some substances of very high concern, but progress remains slow. One of the reasons for this is that today's 'business as usual' means a substance-by-substance approach in risk management.

'REACH still has not led to an effective way of identifying hazards and appropriately addressing them'

Despite significant progress made over the past 12 years, REACH still has not led to an effective way of identifying hazards and appropriately addressing them. A 2018 [progress report](#) by Echa found that 74% of dossiers submitted for registration had important safety information missing under the compliance check.

In 2018, a three-year investigation by [German](#) authorities found that only a third of substances produced above 1,000 tonnes per year met the legally mandated safety information. And even when concerns were demonstrated as a result of the more detailed substance evaluation process, no regulatory follow-up has been initiated for the majority of substances.

Regrettable substitutions

Once a chemical has been regulated, the easiest thing for companies to do is often just to substitute one banned chemical with another unregulated one with a similar structure: it is likely to have similar properties in the application and desired function. Examples range from chlorinated flame retardants being replaced by brominated ones to long-chain PFAS being replaced by short-chain PFAS.

The problem resembles the Grimms' fairy tale of the hare and the hedgehog from Buxtehude, in which the hedgehog is always outrunning the hare. The riddle's solution is that the very similarly looking hedgehog's wife is already waiting, taking his place. In chemicals policy terms: there is always a very similar chemical available right there to fill the place of the banned chemical. This is an unequal race.

Unfortunately, the similarity in properties within substance groups often extends to environmental fate and toxicity – and this is what scientists are finding, for example, with bisphenols.

The case of bisphenols

Last year, CHEM Trust published the [report](#) *From BPA to BPZ: a toxic soup?*, which examined how companies are being allowed to replace the well-known hormone disrupting chemical bisphenol A (BPA), with very similar chemicals that may also be harmful, for example bisphenol S (BPS).

This is despite the fact that Echa's risk assessment committee had found in 2015 that BPS "may have a toxicological profile similar to BPA" and advised against the substitution. In 2018, Echa found that the amount of BPS used in producing thermal paper is increasing rapidly. This could clearly have been avoided.

BPS was selected for substance evaluation under REACH and Echa sent a final decision with additional data request for BPS to the registrant(s) in 2016. We understand that most of the requested information has not been received by the deadline imposed in the final decision. It is now three years later and the Belgian REACH Competent Authority is still awaiting a large part of the requested data.

What regulating substances as groups means in practice

A more effective progress in risk management is warranted, therefore restricting groups of chemicals to become the rule rather than the exception.

'Regulators should not delay action for substances of a chemical group which are likely to be similarly acting and used in the same situation as that of a regulated harmful chemical'

Regulators should not delay action for substances of a chemical group which are likely to be similarly acting and used in the same situation as that of a regulated harmful chemical. Instead, the regulation should be extended to cover those and all other similar compounds.

Positive developments are on the way. Some EU countries as well as Echa have started putting a larger emphasis on grouping to avoid regrettable substitution – for example in Echa's *Strategy to promote substitution to safer chemicals through innovation*.

A more extensive use of grouping has been backed by a detailed study produced for the European Commission as part of the development of a new strategy for a non-toxic environment, which is a commitment of the EU's 7th Environmental Action programme ([ZEAP](#)).

The final study concludes that "the use of grouping strategies for assessing chemicals with structural similarities needs to be scaled up" to increase regulatory efficiency and effectiveness.

Among the proposed recommendations for relevant elements for a strategy for a non-toxic environment, the study mentions a "move from the current chemical-by-chemical to groupings of chemicals approaches in risk assessment and management".

One important tool which is already accepted in company's registration dossiers is the use of read-across (ie, the analogy concept) – why not use it more in the restriction process? CHEM Trust proposes that in the absence of sufficient data to the contrary, chemicals with a similar structure should be assumed to have the toxicological properties as harmful as those of the most toxic known substance in the group.

The main responsibility for the movement from one harmful chemical to another lies with the chemical industry and downstream users. If the regulators started taking a grouping approach to chemicals, this would send a very strong signal to the industry that replacing one chemical with similar chemicals should not be considered.

Recommendations for more grouping involves many actors

Recommendations:

- i) Regulators should regulate groups of related chemicals, rather than taking a substance-by-substance approach. This approach needs to be used in the main EU chemicals law REACH, and also in other chemical regulation, such as, for example, laws on chemicals in Food Contact Materials. Echa should also investigate the effectiveness of the industry's self-classification of chemicals, and whether this it is being done in accordance with the legal requirements;
- ii) Chemical companies must improve their own assessment of the safety of chemicals. It is not acceptable to effectively claim – through lack of appropriate classification – that a chemical like BPS has no hazards when a very similar chemical (BPA) is known to have substantial hazards including endocrine disruption. It is even more unacceptable to do this after regulators have indicated that the relevant chemical is likely to have similar properties to the one that is known to be hazardous, as is happening with BPS; and
- iii) Downstream users of chemicals should not replace one problematic chemical with another similar chemical from the same group. Tools like the SIN list provide a good indication of which similar chemicals to avoid.

Grouping – the game changer for cleaner supply chains

The lack of progress in protecting human health and the environment from the adverse impact on harmful chemicals globally is to a large part due to an approach to regulate chemical by chemical.

Adopting group restriction is a way to accelerate the risk management of chemicals and should be part of the solutions to tackle exposure to harmful substances. This is also of vital importance in the context of the circular economy to ensure clean supply chains and avoiding future legacies for a healthier planet. Otherwise the endless game of playing catch up and always lagging behind will just continue.

The opinions expressed in this article are those of the author and are not necessarily shared by Chemical Watch.

Note: Your access to this subscriber-only article is through a corporate subscription

E&E News

Appeals court upholds fines for selling toxic buildings

<https://www.eenews.net/greenwire/2019/04/15/stories/1060165085>

Associated Press

Posted: April 15, 2019

A federal appeals court has upheld a judge's order requiring Titan Tire Corp. and Dico Inc. to pay almost \$11 million to EPA for allegedly selling contaminated buildings in Des Moines, Iowa, for demolition to avoid cleaning up toxic chemicals.

The 8th U.S. Circuit Court of Appeals released its decision Thursday.

It concluded Judge Robert Pratt correctly found in 2017 that the companies sold buildings containing potential cancer-causing chemicals to avoid the high cost of hazard removal. The companies are subsidiaries of Quincy, Ill.-based tire and wheel maker Titan International Inc.

The buildings were located on company property in Des Moines that has for decades been part of an EPA Superfund site contaminated with pesticides and chemical degreasers.

The government sued in 2010.

The 200-acre site on the east side of the Raccoon River in Des Moines continues to be monitored by EPA and state and local authorities.

A company spokesman did not immediately respond to a message. — *Associated Press*

The Heartland Institute

Air Emissions, Toxic Releases Reduced, EPA Reports

<https://www.heartland.org/news-opinion/news/air-emissions-toxic-releases-reduced-epa-reports>

Bonner Cohen

Posted: April 15, 2019

The U.S. Environmental Protection Agency (EPA) released reports showing air pollution and the amount of toxins released into the environment continue to decline nationwide.

The U.S. Environmental Protection Agency (EPA) released reports showing air pollution and the amount of toxins released into the environment continue to decline nationwide.

An EPA report detailing the ongoing decline in regulated air pollutants from power plants announced emissions of nitrogen oxides (NOx) declined 4 percent below their 2017 levels in 2018. Sulfur dioxide (SO₂) emissions from power plants in the lower 48 states declined 6 percent during the same time period.

These improvements occurred even as demand for electricity increased by 5 percent in 2018 as a result of strong economic growth.

"These data show that America is enjoying ever-cleaner air as our economy grows, and the U.S. continues as a global leader in clean air progress," said Bill Wehrum, EPA assistant administrator for air and radiation, in a February 20 statement accompanying the report's release. "Through state and federal fulfillment with the Clean Air Act, and advances by the power sector, we've seen significant reductions in key pollutants while electricity generation has increased."

Long-Term Gains Continue

The report indicates the air quality improvement in 2018 was a continuation of a long-term trend. From 1990 through 2018, annual emissions of SO₂ from power plants fell by 92 percent and annual emissions of NOx from power plants declined by 84 percent.

Going back even farther, the EPA reports from 1970 to 2017 the combined emissions of six key pollutants regulated under the National Ambient Air Quality Standards dropped by 73 percent, even as the population increased and the U.S. economy grew by more than 260 percent.

Air quality in the United States is already sufficient to ensure public health, and ongoing reductions hurt the economy for no real benefit, says David Wojick, Ph.D., a senior policy analyst with the Committee for a Constructive Tomorrow and a policy advisor to The Heartland Institute, which publishes *Environment & Climate News*.

"Unfortunately, the reductions in NOx and SO2 emissions are both expensive and unnecessary, hence nothing to brag about," Wojick said. "NOx is reduced by cutting power plant efficiency, in a hopeless attempt to push urban ozone concentrations below natural background levels.

"SO2 reductions are related to the old acid-rain scare," said Wojick. "Decreasing SO2 emissions has been accomplished either by switching to low-grade, low-sulfur western coal or retrofitting power plants with expensive scrubbers. NOx and SO2 reductions have been part of the 30-year war on coal, so success is not something to celebrate."

Toxics Declining As Well

In another report, EPA announced the release of toxic chemicals from industrial activities also continued to decline in 2017.

EPA's 2017 Toxic Release Inventory (TRI) National Analysis, released on March 5, 2019, reports releases of TRI chemicals from the U.S. manufacturing sector have declined substantially since 2007 even though the economy has grown.

The latest TRI data, submitted by nearly 22,000 facilities nationwide, show continued improvement in pollution management and reduction. The report notes, for example, airborne releases of regulated chemicals declined by 11 million pounds in 2017, and air releases of TRI chemicals fell 57 percent at industrial facilities since 2007. In addition, since 2007, using such practices as recycling, recovery, and treatment, regulated facilities prevented 87 percent of the nearly 31 billion pounds of regulated chemical wastes from being released into the environment.

Economic, Environmental Compatibility

EPA says its TRI report demonstrates economic growth and environmental improvement are compatible.

"This year's TRI results give proof that economic growth and an improved environment can go hand in hand," said Alexandra Dapolito Dunn, assistant administrator in EPA's Office of Pollution Prevention and Chemical Safety, in a statement.

The United States should get the credit it deserves for leading the way in environmental protection, says Jay Lehr, Ph.D., director of science policy at The Heartland Institute.

"This is incredibly good but not unexpected news," said Lehr. "The public needs to wake up and recognize no nation works harder than the United States, through its industries and its government, to provide its citizens with the cleanest environment on earth.

"We have succeeded at this for decades now, but the press only reports our rare failures," Lehr said. "It is time for Americans to stand up and applaud what we, collectively, consistently accomplish for the environment."

Bonner R. Cohen, Ph.D. (bcohen@nationalcenter.org) is a senior fellow at the National Center for Public Policy Research and a senior policy analyst with the Committee for a Constructive Tomorrow.

TSCA

Chemical Watch

EPA Publishes PMN receipts for November, December, January

<https://chemicalwatch.com/76316/epa-publishes-pmn-receipts-for-november-december-january>

Staff

Posted: April 15, 2019

The US EPA received 41 pre-manufacture notices (PMNs) from November 2018 to January 2019, according to three *Federal Register* notices published on 10 April.

Section 5 of TSCA requires notification when any person intends to manufacture or import a chemical substance for a non-exempt commercial purpose, either for the first time (PMN) or for a 'significant new use' (Snun) for substances subject to a significant new use notice. Submitters must provide the EPA with the appropriate information before initiating the activity; the agency reviews those notices, evaluates risk and takes appropriate action.

Under 2016 updates to TSCA, the EPA must publish a list of these submissions monthly. It will accept comments on the November-January submissions through 10 May.

November 2018

The EPA received 22 PMNs in November. The manufacturer's identity was withheld as confidential business information (CBI) on 12 of these.

The agency also notified that in November it received:

- test data in support of 15 previously submitted PMNs and of one Snun; and
- 13 notices of commencement (NOCs).

December 2018

The EPA received 14 PMNs in December, with 11 of these holding the manufacturer's identity as CBI.

Over the course of the month, it also received:

- one Snun;
- test data in support of 16 previously submitted PMNs and of one Snun; and
- 10 NOCs and one amended NOC.

January 2019

The January report covers a period during which the agency was largely shuttered due to the partial federal government shutdown that ended on the 25th of that month.

In the EPA's notice, it specifies that it "approved" five PMNs, with a note indicating that this designation means the submission "passed a quick initial screen ensuring all required information and documents have been provided." The manufacturer's identity was withheld as confidential business information (CBI) on two of these.

The notice indicates that there were no NOCs during the month. The section on test data receipts repeats the information from December, apparently in error. The agency did not respond to a request for clarification by press time.

Mondaq.com

United States: U.S. EPA Takes Action Under TSCA Identifying Chemicals For Agency Scrutiny

<http://www.mondaq.com/unitedstates/x/798800/Chemicals/US+EPA+Takes+Action+Under+TSCA+Identifying+Chemicals+For+Agency+Scrutiny>

Lawrence Culleen

Posted: April 15, 2019

In its continuing quest to meet regulatory deadlines imposed by the 2016 amendments to the Toxic Substances Control Act (TSCA), the United States Environmental Protection Agency (U.S. EPA) has published a list of 40 chemicals that must be "prioritized" by the end of 2019. The announcement marks the beginning of the Agency's process for designating the 40 listed chemicals identified as either "high" or "low" priority substances for further the U.S. EPA scrutiny. At the conclusion of the prioritization process, at least 20 of the substances likely will be designated as high priority.

A high priority designation immediately commences the U.S. EPA's formal "risk evaluation" procedures under the amended statute. The risk evaluation process can lead to "pause preemption" under the terms of the 2016 amendments and new state laws and regulations restricting the manufacture, processing, distribution, and use of a chemical substance undergoing a risk evaluation could not be established until the evaluation process is completed. The U.S. EPA commenced its first 10 risk evaluations as required under the amended law at the close of 2016. The Agency is required to have an additional 20 risk evaluations of high priority substances ongoing by December 22, 2019. If the U.S. EPA's risk evaluation process concludes that a substance presents an "unreasonable risk" to health or the environment under its "conditions of use," the Agency must commence a rulemaking to prohibit or limit the use of the substance under Section 6 of TSCA.

The Agency's announcement of the list of chemicals to undergo prioritization provides the makers and users of the listed substances an important, time limited opportunity to submit relevant information such as the uses, hazards, and exposure for these chemicals. The U.S. EPA has opened a docket for each of the 40 chemicals and the opportunity to submit information for the U.S. EPA's consideration will close in 90 days (on June 19, 2019). The U.S. EPA will then move to propose the designation of these chemical substances as either high priority or low priority. The statute requires the U.S. EPA to complete the prioritization process, by finalizing its high priority and low priority designations, within the next nine to 12 months.

The list of 20 substances to be reviewed as high priority candidates consists entirely of substances previously identified by U.S. EPA in 2014 as "Work Plan" chemicals. Thus, the list contains few chemicals that should be considered complete "surprises." However, the inclusion of formaldehyde may raise concerns in certain quarters given the scrutiny that has been given to the U.S. EPA's previous struggles with assessing the potential effects of formaldehyde. The Agency has attempted to address these concerns by stating "Moving forward evaluating formaldehyde under the TSCA program does not mean that the formaldehyde work done under IRIS will be lost. In fact, the work done for IRIS will inform the TSCA process. By using our TSCA authority EPA will be able to take regulatory steps; IRIS does not have this authority." Also included in the listing are several chlorinated solvents, phthalates, flame retardants, a fragrance additive, and a polymer pre-cursor:

- p-Dichlorobenzene
- 1,2-Dichloroethane
- trans-1,2- Dichloroethylene
- o-Dichlorobenzene
- 1,1,2-Trichloroethane

- 1,2-Dichloropropane
- 1,1-Dichloroethane
- Dibutyl phthalate (DBP) (1,2-Benzene- dicarboxylic acid, 1,2- dibutyl ester)
- Butyl benzyl phthalate (BBP) – 1,2-Benzene- dicarboxylic acid, 1- butyl 2(phenylmethyl) ester
- Di-ethylhexyl phthalate (DEHP) – (1,2-Benzene- dicarboxylic acid, 1,2- bis(2-ethylhexyl) ester)
- Di-isobutyl phthalate (DIBP) – (1,2-Benzene- dicarboxylic acid, 1,2- bis-(2methylpropyl) ester)
- Dicyclohexyl phthalate
- 4,4'-(1-Methylethylidene)bis[2, 6-dibromophenol] (TBBPA)
- Tris(2-chloroethyl) phosphate (TCEP)
- Phosphoric acid, triphenyl ester (TPP)
- Ethylene dibromide
- 1,3-Butadiene
- 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (HHCB)
- Formaldehyde
- Phthalic anhydride

The U.S. EPA has signaled that it has received a manufacturer request for a EPA to undertake a risk evaluation of two additional phthalates which, if administrative requirements for such request have been met, the Agency would announce publicly in the very near term.

The 20 low priority candidate chemicals were selected from the U.S. EPA's "Safer Chemicals Ingredients List"—a list of substances previously evaluated and considered to meet the U.S. EPA's "Safer Choice" criteria for use in certain common product categories, such as cleaning products.

Other Recent and Impending U.S. EPA Actions Under TSCA

Given the numerous deadlines that are looming under the amendments to TSCA, it is critical that chemical manufacturers and processors of chemicals and formulations remain aware of the recent and upcoming actions under TSCA that can significantly impact their businesses. The following provides a short list of important actions of which to be aware.

Active/Inactive TSCA Inventory Designations. EPA released an updated version of the TSCA Inventory in February 2019. The Inventory is available for download [here](#). This version of the Inventory includes chemical substances reported by manufacturers and processors by their respective reporting deadlines in 2018. The updated TSCA Inventory (confidential and non-confidential versions) includes 40,655 "active" chemical substances and 45,573 "inactive" chemical substances. Once the current 90-day "transition period" has concluded, it will be unlawful to manufacture, import or process in the US any substance that is listed as "inactive" without first providing notice to the U.S. EPA. Thus, prior to the expiration of the "transition period" on May 20, 2019, manufacturers and processors of chemical substances that are not listed as active on the February 2019 TSCA Inventory must take steps to activate the substance by filing a Notice of Activity (NOA Form B) for any chemical substance that they currently are manufacturing or processing, or anticipate manufacturing or processing within 90 days of submission.

Final TSCA Section 6(a) for Methylene Chloride in Paint and Coating Removers. EPA has released its long-awaited [TSCA Section 6\(a\) rule](#) restricting the use of methylene chloride in paint and coating removers. The final rule prohibits the manufacture, processing, and distribution of methylene chloride in paint removers for consumer use. The rule prohibits the sale of methylene chloride-containing paint and coating removers at retail establishments with any consumer sales (including e-commerce sales). The U.S. EPA declined to finalize its determination that the commercial use of methylene chloride-containing paint and coating removers presents an unreasonable risk. Therefore, distributors to commercial users, industrial users, and other businesses will continue to be permitted to distribute methylene chloride-containing paint and coating removers. However, given recent efforts by store-front retailers to "deselect" such products for consumer sales, it remains unclear how distributions to commercial users can or will occur.

The U.S. EPA simultaneously released an advanced notice of proposed rulemaking related to a potential certification program for commercial uses of methylene chloride-containing paint and coating removers. The U.S. EPA has similar programs in place for certain pesticides and refrigerants, and the United Kingdom currently has in place a program to certify commercial users of methylene chloride-containing paint and coating removers. The U.S. EPA is seeking comment on whether a certification program is the appropriate tool to address any potential risks that could be posed by the commercial use of methylene chloride-containing paint and coating removers.

Upcoming Draft Risk Evaluations. The U.S. EPA is expected to publish within days or weeks the highly anticipated draft Risk Evaluations for the remaining 9 of the 10 initial substances to undergo TSCA Risk Evaluations under the amended law and which have been under review since December 2016. The Agency will accept comments on the drafts for a limited period.

Proposed Rules for 5 PBT substances. The U.S. EPA is required to issue no later than June 2019 proposed TSCA Section 6 regulations for 5 persistent, bioaccumulative and toxic (PBT) substances that were identified during 2016 as priorities for regulatory action. The Agency must propose expedited rules intended to reduce exposures to the extent practicable.

** Camille Heyboer also contributed to this Advisory.*

Originally published by *Hazmat Management Magazine*.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

The National Law Review

EPA Proposes TSCA CDR Revisions and Update to Small Manufacturer Definition for TSCA Section 8(a)

<https://www.natlawreview.com/article/epa-proposes-tsca-cdr-revisions-and-update-to-small-manufacturer-definition-tsca>

Bergeson & Campbell

Posted: April 15, 2019

On April 12, 2019, the U.S. Environmental Protection Agency (EPA) released a proposed rule that would amend the Toxic Substances Control Act (TSCA) Section 8(a) Chemical Data Reporting (CDR) requirements and the TSCA Section 8(a) size standards for small manufacturers. The current CDR rule requires manufacturers (including importers) of certain chemical substances listed on the TSCA Chemical Substance Inventory (TSCA Inventory) to report data on chemical manufacturing, processing, and use every four years. EPA is proposing several changes to the CDR rule to make regulatory updates to align with new statutory requirements of TSCA, improve the CDR data collected as necessary to support the implementation of TSCA, and potentially reduce the burden for certain CDR reporters. Proposed updates to the definition for small manufacturers, including a new definition for small governments, are being made in accordance with TSCA Section 8(a)(3)(C) and impact certain reporting and recordkeeping requirements for TSCA Section 8(a) rules, including CDR. EPA states that the definitions may reduce the burden on chemical manufacturers by increasing the number of manufacturers considered small. Overall, according to EPA, the regulatory modifications may better address EPA and public information needs by providing additional information that is currently not collected; improve the usability and reliability of the reported data; and ensure that data are available in a timely manner. Publication of the proposed rule in the *Federal Register* will begin a 60-day comment period. A prepublication version of the proposed rule is available [here](#).

Summary of Proposed Rule

EPA is proposing several amendments to the current CDR rule requirements. These amendments include:

- Changing requirements for making confidentiality claims, including to identify when upfront substantiation is required, update the substantiation questions, and identify data elements that cannot be claimed as confidential to align with the Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act);
- Replacing certain processing and use codes (industrial function and commercial/consumer product use) with codes based on the Organization for Economic Cooperation and Development's (OECD) functional use and product and article use codes, including adding reporting of the OECD-based functional use codes for consumer and commercial use information;
- Adding the requirement to report the North American Industrial Classification System (NAICS) code(s) for the site of manufacture;
- Modifying the requirement to indicate whether a chemical is removed from the waste stream and recycled, remanufactured, reprocessed, or reused with the requirement to indicate whether a chemical is removed from the waste stream and recycled;
- Adding a requirement to identify the percent total production volume of a chemical substance that is a byproduct;
- Requiring that the secondary submitter of a joint submission report the chemical specific function along with the percentage of the chemical in the imported product;
- Adding a voluntary data element to provide a public contact;
- Modifying the definition of "parent company" to clarify the definition, add the requirement to report a foreign parent company, when applicable, and codify reporting scenarios;
- Simplifying the reporting process for co-manufacturers by enabling a multi-reporter process for reporters to separately report directly to EPA within the e-CDRweb reporting tool;
- Allowing reporting in specified metal categories for inorganic byproducts;
- Adding exemptions for specifically identified byproducts that are recycled in a site-limited, enclosed system and for byproducts that are manufactured as part of non-integral pollution control and boiler equipment; and
- Clarifying regulatory text by removing outdated text, consolidating exemptions, and making other improvements.

Additionally, EPA proposes to update the size standards definition for small manufacturers for reporting and recordkeeping requirements under TSCA Section 8(a).

EPA states that it is also giving notice of some aspects of the Lautenberg Act amendments that may impact, more broadly, TSCA submitters. For example, under TSCA Section 14(e)(1)(B), EPA is charged with implementing a ten year "sunset" provision for confidentiality claims. EPA states that, because the small manufacturer size standard under TSCA Section 8(a) impacts the CDR rule more than other TSCA Section 8(a) reporting rules at this time, EPA included these two actions as one proposed rule. EPA recognizes that the changes made to the small business definition will impact current and future TSCA Section 8(a) reporting rules, however, and intends to promulgate these amendments as two separate actions.

EPA states that it is taking "other, non-regulatory steps to minimize the burden on all reporters, including small entities, by improving the reporting application and database to be user-friendly and dynamic, consisting of straightforward questions that include fill-in-the-blank (number) fields, check boxes, and drop-down menus." In addition, EPA is replacing the current preformatted Form U with a customized report based on the actual information submitted by a site through e-CDRweb, the electronic reporting tool. EPA notes that although these changes are not discussed further in the proposed rule, "they are an important component of the effort to reduce burden and modernize the data collection system." EPA is adding an addendum to the current CDR rule Information Collection Request (ICR) (Office of Management and Budget (OMB) Control Number 2070-0162) for the regulatory changes proposed. In addition to the changes outlined in this proposed rule, if needed, EPA states that it will provide a second addendum to the ICR to address non-regulatory changes.

According to the proposed rule, as was done for previous CDR collections, EPA will provide industry with the opportunity to test and comment on the updated e-CDRweb prior to the **2020** CDR submission period. EPA states that it anticipates holding a webinar to introduce the revised e-CDRweb to the regulated community directly following promulgation of the final CDR revisions rule. During the webinar, EPA will issue a general invitation to interested parties to participate in a short testing period of the revised e-CDRweb. EPA will open the testing period within four months after issuing the final rule, and currently anticipates that testing will occur in the **February to March 2020** timeframe. Because of resource constraints, the testing period will be limited to 25 participants. For additional information, contact Susan Sharkey, Chemical Control Division, Office of Pollution Prevention and Toxics, at sharkey.susan@epa.gov. EPA states that it will also post information to the [CDR website](#).

Why EPA Is Taking This Action

According to the proposed rule, EPA is proposing revisions to the CDR rule for three primary reasons: to align with Lautenberg Act amendments to TSCA; to improve the CDR data collected as necessary to support the implementation of TSCA; and to reduce the burden for CDR reporters pursuant to TSCA Section 8(a)(5).

The Lautenberg Act amended the TSCA requirements associated with confidentiality claims, including identifying the data elements eligible for confidentiality claims and when substantiation of claims is required. EPA proposes revisions to the CDR rule to address these changes.

EPA proposes to modify the definition for small manufacturers, as a result of the Lautenberg Act's amendment of TSCA Section 8(a)(3)(C), which requires EPA, after consultation with the Administrator of the U.S. Small Business Administration (SBA), to review the adequacy of the standards for determining which manufacturers and processors qualify as small manufacturers and processors for purposes of TSCA Sections 8(a)(1) and 8(a)(3). EPA published a determination that revision of the TSCA Section 8(a) size standards for small manufacturers was warranted in a [Federal Register notice](#) published November 30, 2017 (82 Fed. Reg. 56824). EPA's determination, supporting documents, and comments received can be found in [Docket ID EPA-HQ-OPPT-2016-0675](#). This proposed change may reduce the burden for some manufacturers that would be considered small manufacturers under CDR and other TSCA Section 8(a) rules relying on the small manufacturer definition in 40 C.F.R. Part 704.3.

EPA states that it is also proposing to make some changes to the CDR data reporting so the information collected is tailored to meet better its overall information needs and align them with specific needs for prioritization and risk evaluation under TSCA Section 6. TSCA Section 2 specifies that "adequate information should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such information should be the responsibility of those who manufacture and those who process such chemical substances and mixtures" (TSCA Section 2(b)(1)). These proposed changes include the addition of data elements, such as a site-specific NAICS code and how much of a chemical is a byproduct; modification to multi-reporter submission requirements, including adding a process for jointly reporting co-manufactured chemicals; and changes to current data elements, such as codes used for reporting processing and use information. In addition, according to EPA, proposed changes to the parent company reporting requirements would increase EPA's ability to protect confidential information while better enabling EPA to make information publicly available; and the addition of a voluntary public contact would direct inquiries from the public to a designated individual rather than to the technical contact. These changes would help to meet EPA's requirement under TSCA Section 26(h), in carrying out TSCA Sections 4, 5, and 6, to make scientific decisions consistent with the best available science, improve the CDR data collected as necessary to support the implementation of TSCA, and improve EPA's ability to provide effectively public access to the information. Furthermore, these changes would meet EPA's objective to obtain new and updated information relating to potential exposures to a major subset of chemical substances listed on the TSCA Inventory.

EPA states that, at the same time, it is interested in reducing the burden on industry while maintaining EPA's ability to receive the information it needs to understand exposure to these chemicals (TSCA Section 8(a)(5)). EPA used experiences

from the 2016 CDR submission period, concerns identified by users of CDR information, and burden-reduction suggestions made as part of public comment opportunities, including public comments solicited in conjunction with Executive Order 13777, Enforcing the Regulatory Reform Agenda ([Docket ID EPA-HQ-OA-2017-0190](#) and [82 Fed. Reg. 17793](#), April 13, 2017) and as part of the renewal of the ICR ([Docket ID EPA-HQ-OPPT-2017-0648](#) and [83 Fed. Reg. 36928](#), July 31, 2018). In addition, EPA identified ways to reduce the burden specifically for manufacturers of inorganic byproducts as part of an extensive negotiated rulemaking effort, which included participation by all stakeholder groups, and subsequent public comment period in 2017 ([Docket ID EPA-HQ-OPPT-2016-0597](#) and [82 Fed. Reg. 47423](#), October 12, 2017). Taking into account these experiences and stakeholder input, EPA proposes the following changes to reduce burden: the new ability to report alternatively inorganic byproducts within defined metal categories, the introduction of two new exemptions related to byproducts, a revised approach to reporting for co-manufactured chemicals, and the harmonization of function and product codes with those used by other countries.

Additionally, EPA received comments that modernizing the CDR data collection and public access to the database would reduce reporting burden and facilitate ease of use by reporters and the public (81 Fed. Reg. 90843 (Dec. 15, 2016); [Docket ID EPA-HQ-OPPT-2016-0597](#) and Refs. 1, 2, and 3). These comments were used to develop this proposal and to inform other, non-regulatory changes that EPA plans to make to the reporting process.

Estimated Incremental Impacts of This Action

EPA states that it evaluated the potential costs and benefits of revising CDR reporting requirements and modifying standards for small manufacturers in CDR and other TSCA Section 8(a) reporting. Some aspects of the proposal increase the burden and cost while other aspects decrease the burden and result in cost savings. Overall, EPA estimates that the combined impact of all the proposed amendments would decrease the total burden and result in a cost savings to industry and government reporters. These analyses are briefly summarized below:

1. *CDR revisions economic impacts summary.* The proposed amendments are estimated to result in an overall net decrease in burden with associated cost savings. The estimated changes include increases in rule familiarization, compliance determination, and form completion. The future cycle burden and costs or cost savings are listed by type of change:
 1. For changes to modify or add reportable data elements (*e.g.*, processing and use codes, NAICS codes, byproduct percentage, chemical function, public contact, and parent company), the incremental burden is expected to increase by 45,000 hours with an associated cost increase of \$3.5 million.
 2. For changes to claiming confidentiality, the incremental burden is expected to decrease by 340 hours with an associated cost savings of \$0.03 million.
 3. For changes to add byproducts exemptions, the incremental burden is expected to decrease by 68,000 hours with an associated cost savings of \$5.2 million.
 4. For changes to implement consolidated category reporting for certain inorganic metals, the incremental burden is expected to decrease by 13,000 hours with an associated cost savings of \$1.0 million.
 5. For changes that affect CDR reporting eligibility (targeted to certain sites with varying reductions to the number of chemicals reported per site), the incremental burden is expected to result in a net decrease by 81,000 hours with associated cost savings at \$6.3 million. There are increases in burden and costs for several requirements, such as the need to assess whether exemptions apply (compliance determination) and the need to familiarize oneself with modifications to the rule (rule familiarization), estimated at 3,000 hours with an associated cost of \$0.24 million. The changes to form completion in the aggregate, however, are estimated to result in an overall net decrease in burden and cost savings due to decreases in the

number of sites reporting and/or the number of chemical reports from a site. These decreases are due to the proposed byproduct exemptions and consolidated category reporting.

In sum, EPA states that the overall incremental impacts to industry and government reporters result in a net decrease in burden and cost savings. Estimates include rule familiarization, compliance determination, and CDR form completion. Note that estimated changes to recordkeeping burden and cost are negligible and estimated at zero. An estimated 5,660 sites are expected to report during the next CDR submission period in **2020**. The total incremental burden reduction and cost savings are estimated at a 36,000 hour reduction and \$2.79 million cost savings. On an annualized basis using a three percent and a seven percent discount rate over a ten-year period, the annualized incremental cost savings is estimated at \$0.66 million and \$0.65 million per year, respectively.

2. *TSCA Section 8(a) small manufacturer definition economic impacts summary.* The proposed modified standards for small manufacturers would affect TSCA Section 8(a) rules, including CDR. These rules use the TSCA Section 8(a) small manufacturer definition to identify the entities exempted from reporting or for other reduced reporting requirements. The impact from the proposal is focused on the CDR rule and may impact whether a site is required to report or the number of chemicals a site would report. There is no measurable impact to other TSCA Section 8(a) rules either because EPA has not received any chemical reports for the rule for an extended period of time or because the rule uses a different definition that is not being changed by this proposal. According to EPA, the proposed definition results in a cost savings.

- a. *Impact of proposed small manufacturer definition.* The proposal is estimated to eliminate reporting entirely for 93 industry sites and reduce reporting by eliminating the need to report at least one chemical for additional 129 industry sites. This reduction in reporting is in addition to the sites already not reporting because they meet the current small manufacturer definition.

Under this proposed definition, incremental future cycle burden reductions and cost savings are estimated at 64,000 hours and \$5.0 million, respectively, over a four-year CDR reporting cycle. On an annualized basis, using a three percent and seven percent discount rate over a ten-year period yields net annualized incremental cost savings of \$1.2 million and \$1.2 million per year, respectively. This proposal also includes a small government exemption.

- b. *Impact of proposed small government definition.* The following government entities report under CDR: seven municipalities, one county-level public utility district, and one tribal entity. Under the proposed small government definition, four government entities would be exempted from the need to report. The burden and cost savings associated with the exempted entities, in future reporting cycles, are included in the estimates for the proposed definition with incremental future cycle burden reduction and cost savings estimated at 500 hours and \$39,000 respectively, over a four-year CDR reporting cycle.
3. *Total economic impacts summary for proposal.* The amendments in the proposed rule may affect the number of reports submitted during a submission period and the burden to prepare a report. EPA estimates that the combined impact of all of the proposed amendments would decrease the total burden and cost to industry associated with CDR reporting. Tables 1A and 1B in the proposed rule present the summaries of burden and cost impacts, respectively, for the proposed CDR revisions and TSCA Section 8(a) small manufacturer definition update. In the tables, EPA presents estimates for the CDR four-year first cycle and the future cycle. In the first cycle, higher burdens and costs are incurred, because all reporters need to familiarize themselves with the changes and may take longer to complete reporting activities. After the first cycle, and for future cycles, experienced reporters (85 percent) are familiar with the changed requirements. In addition to estimates that cover the four-year CDR cycle, Tables 1A and 1B present annual estimates. These annual estimates are the four-year estimates divided by four. EPA acknowledges that activities may be spread unevenly across the four years. On an annualized basis, using a three percent and seven percent discount rate over a ten-year period yields a net annualized incremental cost savings of \$1.85 million and \$1.83 million per year, respectively, for the overall proposed rule.

As we noted in our [“Forecast for U.S. Federal and International Chemical Regulatory Policy 2019”](#) document, EPA has made changes in the last four cycles of CDR (or its predecessor, the Inventory Update Reporting (IUR) rule). This is the fifth set of modifications in as many reporting cycles, and the final changes will be implemented less than a year before reporting is required in **2020**. So while these proposed changes may ultimately prove helpful to the reporting community, the reality is that regulated stakeholders will bear an increased burden in the near future.

The exception to this will be those entities captured under the existing definition of “small business.” The current monetary thresholds for determining small business status under CDR are \$40 million in sales if the subject chemical volume is less than or equal to 100,000 pounds; or \$4 million in sales regardless of volume. EPA is proposing to adjust the \$40 million standard to \$110 million and the \$4 million standard to \$11 million. While EPA indicated that it considered different options for defining small businesses under CDR, we applaud the decision to propose an approach that simply updates the numbers in the current standard, as that will make it easier for stakeholders to understand and apply within their own businesses.

In terms of other changes proposed, while we recognize EPA’s general desire to harmonize reporting codes with OECD, we note that one of the more challenging aspects of CDR reporting is identifying the “top ten,” the unique three code combinations for the subject chemicals’ process or use, industry sector, and industrial function under Form U, Part IIIA. With the proposed change to align reporting codes with OECD codes, companies cannot rely on code combinations reported in the past. EPA also intends to add function code reporting for commercial and consumer products under Part IIIB; these codes would also align with OECD codes. In the notice, EPA mentions that the OECD codes are more specific than the current CDR codes. Whether this specificity will help or hinder companies’ efforts is yet to be seen.

The notice also covers issues related to confidential business information (CBI) reporting and substantiation requirements under amended TSCA. While EPA’s review of the CBI substantiation process expected under CDR is not unexpected, stakeholders should take note that EPA believes the following reporting elements under CDR are NOT eligible for CBI protection:

- Use, sector, and function of reported chemical in industrial processing;
- Whether the reported chemical is used in commercial or consumer products;
- Commercial or consumer product category for reported chemical;
- Function of chemical in commercial or consumer products; and
- Whether the reported chemical is used in children’s products.

There is also a proposal to change the current approach for joint submissions between U.S. companies and their foreign suppliers, in which the foreign suppliers would also need to report chemical-specific function information along with chemical composition. While a relatively minor change, we note that this would require outreach education by U.S. entities to ensure their foreign partners appreciate this change.

Most of the remaining proposed modifications focus on reporting of byproducts that would not be exempted from CDR. As EPA and others came to appreciate during the negotiated rulemaking efforts in 2016, the recycling of byproducts that would otherwise be disposed of as waste cuts across many industries and is very complicated. A one-size-fits-all approach is simply unworkable.

We applaud EPA’s consideration of exempting certain byproduct recycling processes that occur within enclosed systems from reporting obligations. We support the concept of a petition process to request consideration of other exemptions in the future.

We appreciate the option of reporting of recycled inorganic metal byproducts by category. We note, however, that the additional stipulations for this option (reporting in weight versus volume and exclusions from category listing) may impact stakeholders’ interest.

We anticipate that EPA's proposal to require total percentage of product volume of a reported chemical from byproduct recycling processing could be of concern to the reporting community. As noted, recycling of byproducts that would otherwise be disposed of as waste is complicated and often involves extraction of chemicals from mixtures with complex and variable components. Impacted stakeholders should consider carefully this proposed modification and provide EPA with clear and concise input as to any challenges or difficulties associated with it.

Given that the next CDR reporting cycle is coming up next year, we hope EPA staff can move quickly to issue a final rule and complete testing on the new electronic system. We also hope that this upcoming adjustment in CDR will be the last for a while, so companies can set their internal processes with the confidence that no further changes are forthcoming.

From: D'Andrea, Anthony [dandrea.anthony@epa.gov]
Sent: 3/26/2019 8:44:29 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Clips: 3/26/2019

Daily Clips
March 26, 2019

Administrator

- [Bloomberg Environment: Better to Work with Farmers on Lake Erie Issues, EPA Head Says](#)
- [E&E News: Wheeler vows not to work on Pebble, some Superfund cleanups](#)
- [The Hill: \(Opinion\) EPA pretends climate change and water quality are separate issues — they're not](#)

Air

- [Press Herald: EPA: South Portland oil storage facility violated Clean Air Act, agrees to settlement](#)

Chemical

- [Chemical Watch: Walmart, Amazon pull paint removers in the face of NGO pressure](#)
- [E&E News: 9th Circuit set for chlorpyrifos clash](#)
- [Politico: EPA may thwart efforts by states to set stricter pesticide rules](#)
- [The Beverly Review: EPA investigating after Durbin relates concerns](#)

EPA

- [E&E News: Region 6 chief transferring to HQ air office](#)
- [The Daily Caller: Duke University to Pay \\$113M to Feds After Research Grant Fraud](#)
- [The New York Times: Interior Nominee Intervened to Block Report on Endangered Species](#)

Oil

- [Alaska Public Media: Groups say they will sue unless EPA renews effort to restrict oil spill dispersants](#)
- [WTOP: Groups: EPA has dragged heels on oil dispersant rules](#)

Superfund

- [Bloomberg Environment: 'Dead and Buried' Corporations May Face Superfund Liability](#)
- [Bloomberg Environment: Puerto Rico Development Corporation Faces Superfund Tab](#)
- [Bloomberg News: Midwest Floods Have Reached Superfund Sites in Three States, EPA Says](#)
- [The Salt Lake Tribune: Century-old silver mines are long gone. But tainted tailings are still polluting Park City. Now the feds are suing to clean up the Superfund site.](#)

Water

- [E&E News: Court keeps Obama-era rule in effect in Ohio, Tenn.](#)
- [InsideEPA: Judge's Rejection Of New CWA Rule Injunction Prolongs Policy 'Patchwork'](#)
- [New York Post: \(Opinion\) Why Trump should call off the EPA's latest assault on NYC](#)
- [The Detroit News: Whitmer orders DEQ to start developing PFAS water standards](#)

ADMINISTRATOR

Bloomberg Environment

Better to Work with Farmers on Lake Erie Issues, EPA Head Says

<https://news.bloombergenvironment.com/environment-and-energy/better-to-work-with-farmers-on-lake-erie-issues-epa-head-says>

Alex Ebert

Monday, March 25, 2019

- Andrew Wheeler said waters rule change won't affect Lake Erie, as activists claim
- Working with farmers to address runoff will have more effect, he says

Environmental Protection Agency Administrator Andrew Wheeler said March 25 the key to mitigating massive blooms of algae that contaminate Lake Erie every year isn't more regulation but working with farmers to manage runoff.

"Instead of using a hammer to hit the farmers we're trying to work more cooperatively with our farmers, because our farmers and the ag community, they are natural stewards of the land and the water," Wheeler said.

He was in Cincinnati March 25 to tour the EPA's water testing facility, where researchers are studying ways to monitor for per- and polyfluoroalkyl substances (PFAS), which have been found to contaminate drinking water supplies in many communities.

Wheeler also said he agrees with President Donald Trump's fiscal 2020 budget proposal what would cut 2,000 EPA jobs, largely through attrition.

The agency would still be able to do its mission but would work more closely with the states to accomplish what it needs to do, he said.

He pointed out that most states already are authorized to run their own clean water and clean air permitting programs.

Waters Rule

Environmental activists have said they are concerned that a proposal to narrow the regulatory scope of which wetlands and isolated waterways are protected by the federal Clean Water Act could exacerbate Lake Erie's algae problems.

They told Bloomberg Environment that changes to a rule defining what is meant by "waters of the U.S.," or WOTUS, could end federal permitting for developments affected isolated water and streams that flow only part of the year, as well as nearby wetlands.

These types of waterways help filter farm runoff that flows into Lake Erie, carrying with it nutrients such as phosphorus.

Wheeler said they have no cause for concern.

"Important watersheds like the Great Lakes will continue to be protected," he said at a news conference. The federal EPA, he said, is also broadening its communications with the agriculture community about how to implement voluntary measures to reduce runoff.

The goal of revising the WOTUS definition is to allow every farmer to look out onto his or her land and be able to tell whether a waterbody is regulated by the federal government, Wheeler said.

Regulatory Clarity

A federal pull-back raises concerns that the Ohio EPA may not have the manpower or legal authority to protect these water bodies, Peter Bucher, the water resources director for the Ohio Environmental Council, said in a March 22 news conference.

Roughly 45 percent of Ohio rivers and streams don't flow year-round, and about 60 percent of the state's streams don't have another stream flowing into them, Bucher said. These types of intermittent streams wouldn't be protected by the federal Clean Water Act under the proposal put forth by the EPA.

Supporters of that rule change, though, say states can step in and fill the regulatory gaps and have done so.

The Ohio EPA, Bucher said, would have to greatly increase its enforcement capabilities and expand its regulatory authority to cover these water bodies.

The Ohio EPA has found that phosphorus runoff from farms is a major factor in annual algal blooms that endanger drinking water for millions of Ohioans. Those blooms led to residents becoming sick from drinking contaminated Toledo water in 2013 and 2014.

E&E News

Wheeler vows not to work on Pebble, some Superfund cleanups

<https://www.eenews.net/greenwire/2019/03/26/stories/1060129543>

Dylan Brown and Corbin Hiar

Tuesday, March 26, 2019

EPA chief Andrew Wheeler has promised not to weigh in on the Pebble mine proposal and toxic waste site cleanups connected to his former lobbying clients after media scrutiny.

The Pebble move, Wheeler announced in an updated recusal statement, will apply to "any associated litigation, settlement agreement and permitting" and last "for the duration of my EPA tenure."

The Superfund recusal promise, on the other hand, will last only until April 20, 2020 — the second anniversary of Wheeler's tenure in the Trump administration — and hasn't broadened the scope of sites Wheeler will avoid, according to a spreadsheet provided by EPA.

The updated document eliminated eight days from the period of time Wheeler is "prohibited from participating in any particular matter involving specific parties" he represented or issues he lobbied on in the two years before he joined EPA as well as clients that are now represented by his former employer, Faegre Baker Daniels LLP, and clarified that he could work on "particular matters of general applicability" such as the Clean Power Plan.

The reason for the date change, the new document says, was a "typographical error" regarding when Wheeler was "sworn into federal service."

Wheeler's updated recusal list continues to include Murray Energy Corp., International Paper, Sargento Foods Inc. and five other former clients as well as two lobbying issues: the Energy Star efficiency certification program and Section 202(c) of the Federal Power Act, which covers a potential emergency declaration to prevent coal-fired power plant closures.

The new document — signed March 20 and first reported yesterday by Bloomberg News — was careful to note that the Pebble addition was "not necessarily required" and was intended "to avoid the appearance of any ethical concerns in the role of Administrator."

Wheeler's original May 2018 recusal statement did not mention Pebble LP or its controversial Alaska gold and copper project, even though his former lobbying firm set up a pivotal meeting for the mining company at EPA two years ago.

Faegre never registered to lobby for Pebble LP, and both parties have declined to comment on the nature of their relationship. But lobbyist Darrin Munoz, who worked directly with Wheeler for separate clients at the time, arranged and attended the 2017 meeting between Pebble CEO Tom Collier and then-EPA Administrator Scott Pruitt (Greenwire, July 24, 2018). Munoz now works full-time for his and Wheeler's former client Murray Energy (Greenwire, March 4).

Pebble wanted Pruitt to scrap mining restrictions proposed by the Obama administration that, if finalized, would block construction to protect world-class salmon breeding grounds downstream in Bristol Bay.

An hour later, Pruitt ordered the cancellation of the pending Bristol Bay proposed determination. He would later withdraw that order, but Pebble had already submitted a mining application and secured a legal settlement preventing EPA from finalizing mining restrictions until 2021.

When Pruitt resigned, Pebble foes and ethics watchdogs quickly called for Wheeler to recuse himself, but EPA said agency ethics officials concluded that was unnecessary because Wheeler never worked directly for Pebble LP.

EPA General Counsel Matthew Leopold now has final say on Pebble matters.

"We will work with the appropriate people within the agency and keep our focus on removing the ill-conceived Proposed Determination," Pebble spokesman Mike Heatwole said.

Wheeler's step away from the high-stakes Pebble debate comes six months after E&E News first reported he was considering the move (Greenwire, Sept. 19, 2018).

Superfund

Superfund sign on a fence. Photo credit: markzvo/Wikipedia

EPA Administrator Andrew Wheeler has recused himself from work on Superfund sites involving his former clients. markzvo/Wikipedia

Meanwhile, Wheeler's explicit promise to avoid involvement in Superfund sites where his "former clients" are potentially responsible parties is also "to avoid any concerns about my ethical obligations," the updated recusal says.

But the administrator is still recused from overseeing only 45 sites where International Paper is responsible for the cleanup, an EPA spreadsheet shows.

That means he could continue to guide the cleanup of the Navajo Nation uranium mines, which Energy Fuels Resources Inc. — a uranium mining firm on Wheeler's recusal list — has said it's looking "to become involved in" (E&E News PM, Feb. 1).

The new language also wouldn't apply to the \$1.4 billion Diamond Alkali Superfund cleanup and other sites that involve past clients Wheeler lobbied for more than two years before joining the Trump administration because EPA doesn't consider them "former clients," as defined by the president's ethics pledge (Greenwire, Sept. 10, 2018).

Most of EPA's Superfund decisionmaking is currently overseen by Peter Wright, a special counsel to the administrator whom President Trump has nominated to lead the agency's Office of Land and Emergency Management on a long-term basis. Wright, a former lawyer for DowDuPont Inc., is also recused from weighing in on dozens of sites linked to his previous employer (Greenwire, Aug. 6, 2018).

The Hill

(Opinion) EPA pretends climate change and water quality are separate issues – they're not

<https://thehill.com/opinion/energy-environment/435838-epa-pretends-climate-change-and-water-quality-are-separate-issues>

Bob Wendelgass

Tuesday, March 26, 2019

Environmental Protection Agency Administrator Andrew Wheeler took to the morning news this week to serve the American public a heaping of hypocrisy on the Trump administration's commitment to keeping our country's water clean.

Wheeler declared that shrinking access to clean water is the most serious environmental threat we're facing, even more so than the effects of climate change. While we don't disagree that access to clean water is a huge issue, what Wheeler failed to mention was not only the link between climate change and clean water, but that the Trump administration has been actively working to undermine the very programs that protect clean water — the cause he cites as a priority for the EPA.

Wheeler's statements reflect an unwillingness to accept the impact of climate change on global resources, including water. A changing climate is and will continue to result in changing water quality in drinking water sources, prompting public health risks and costly new treatment changes. Climate change affects our water, and we can't protect our water and ignore the threats from climate change.

But even worse, Wheeler's statements ignore the many ways this administration is attacking the programs that protect clean water. Trump's budget proposal includes a 39 percent cut in funding for programs which protect our water against pollution and contamination, including an unprecedented \$874 million cut to clean water infrastructure, which supports the construction of water treatment facilities. Trump's budget also slashes categorical grants to assist state clean water programs by more than \$260 million, a whopping 62 percent cut.

Trump also wants to eliminate millions in funding for critical EPA programs, and going so far as to gut programs like the South Florida geographic program, which helps ensure that clean water flows through Everglades National Park, and the state-federal pollution monitoring partnership that has resulted in improved water quality for the Everglades. The budget proposal cuts millions more in funding for important programs targeting lead risk reduction, river water contamination monitoring, water infrastructure along the U.S.-Mexico border, and evaluations for toxic chemicals that can negatively impact our health.

Wheeler even touts new EPA initiatives around oil and gas wastewater treatment and recycling. This is remarkably risky given that we don't know enough about this waste stream to suggest that we can be cavalier in our approach to disposal, potentially putting water resources and drinking water at risk.

Trump's proposal includes a 34 percent cut in grants made to states to ensure drinking water meets federal standards. Despite overwhelming evidence that lead in our children's drinking water remains a serious threat to our children's health, potentially stunting their growth and development, the Trump administration is eager to cut funding for the programs that keep them safe. With this approach to governing, it will be our children, unfortunately who will bear the burden of this administration's radical choices and anti-clean water agenda.

But it isn't just funding cuts that endanger our water. Extreme cuts to federal safeguards that protect the sources of our drinking water put the health and well-being of our communities in jeopardy. In February, the EPA and the Army Corps of Engineers opened a short public comment period on a proposal to roll back federal protections for streams and wetlands under the Clean Water Act. The proposal would favor corporate polluters and those eager to exploit our public lands over clean drinking water for millions of Americans at risk — and devastate coastal communities across the country.

Wheeler's insistence that climate change and access to safe drinking water are unrelated sends the message that he puts the interest of industry before the safety of families and future generations. Wheeler knows that man-made climate change is already damaging natural resources around the world, including water supplies, yet, he has directed his agency to treat these issues as unrelated.

While it may be convenient for Wheeler to deny the relationship between climate change and limited access to clean water, it is dishonest and irresponsible.

Despite Wheeler's claims about efforts to protect clean water sources, Trump's budget proposal, and its historic cuts to vital EPA programs, reveals the administration's real priorities, and protecting our water is not among them. Though Wheeler claims to care deeply about protecting and expanding access to clean water, his record certainly doesn't show it.

AIR

Press Herald

EPA: South Portland oil storage facility violated Clean Air Act, agrees to settlement

<https://www.pressherald.com/2019/03/25/epa-south-portland-oil-storage-facility-violated-clean-air-act-agrees-to-settlement/>

Kelley Bouchard

Monday, March 25, 2019

SOUTH PORTLAND — Global Partners LP has agreed to pay fines and upgrade its petroleum storage facility on the Fore River after being charged with violating the Clean Air Act for more than a decade, the federal Environmental Protection Agency announced Monday.

Based in Waltham, Massachusetts, Global stores asphalt and No. 6 heavy fuel oil at its facility off Lincoln Street, at the end of Clark Road, near the Forest City Cemetery and the Pleasantdale neighborhood.

The Global facility receives asphalt and heavy oil by barge or truck and stores them in several massive tanks until they are loaded into tank trucks or marine vessels for distribution, according to a complaint filed Monday in U.S. District Court in Portland.

The tanks, which are heated to keep the asphalt and heavy oil fluid, were tested in 2016 and found to emit hazardous volatile organic chemicals “at substantially higher levels than previously estimated,” the EPA said in a news release.

Potential VOC emissions were found to be greater than 50 tons per year – more than double the 21.9 tons per year allowed under an emissions license issued by the Maine Department of Environmental Protection in 2013, the complaint says.

VOCs produce a variety of short- and long-term health and environmental problems. The EPA didn’t identify which VOCs were emitted or quantify the hazard posed by the Global facility.

Because Global has operated the facility since 2002, the company is liable to pay civil penalties ranging from \$32,500 per day for each violation after March 15, 2004, to \$97,229 per day for each violation after Nov. 2, 2015, the complaint says.

Under a proposed settlement with the EPA and the U.S. Department of Justice, Global must apply for a revised license from the Maine DEP and take steps to reduce VOC emissions at the facility. The settlement, also filed Monday at the Portland courthouse, is a consent decree that is subject to a 30-day public comment period and final court approval.

The revised license will limit the amount of asphalt and heavy oil that can pass through the facility, the number of days that the storage tanks can be heated, and the total amount of heavy oil that can be stored at the facility. Global also must install mist eliminator systems on the tanks to address local air impacts.

In addition, the company must pay a \$40,000 fine and invest at least \$150,000 in a program to replace or upgrade wood stoves in the community. The program will provide vouchers to help people replace or retrofit older wood-burning stoves with cleaner-burning, more efficient heating equipment.

Global issued this written statement Monday: “As indicated, we have reached an agreement to reduce emissions at our South Portland Maine facility and invest in education around replacing wood stoves. We look forward to continuing to work with the community and government agencies.”

South Portland officials have taken steps in recent years to address concerns about the health and environmental impacts of more than 100 large storage tanks that serve seven fuel terminals on the city's waterfront.

In 2014, the City Council passed the so-called Clear Skies ordinance, which effectively blocked the Portland Pipe Line Corp. from reversing the flow of its 236-mile South Portland-to-Montreal pipeline, largely because of potential air-quality impacts. The company has challenged the ordinance in federal court.

VOCs include a variety of chemicals that may produce adverse health effects such as eye, nose, and throat irritation, headaches, nausea, and damage to the liver, kidneys and central nervous system, the EPA said in the release.

VOCs also contribute to the formation of ground-level ozone. Breathing ozone can trigger a variety of health problems, particularly for children, seniors elderly and anyone with lung diseases such as asthma. Ground-level ozone also can harm sensitive vegetation and ecosystems.

CHEMICAL

Chemical Watch

Walmart, Amazon pull paint removers in the face of NGO pressure

<https://chemicalwatch.com/75389/walmart-amazon-pull-paint-removers-in-the-face-of-ngo-pressure>

Tuesday, March 26, 2019

Walmart and Amazon have both removed online listings for paint removal products containing methylene chloride and N-methylpyrrolidone (NMP), after pressure from the NGO Safer Chemicals Healthy Families.

Both retailers were among the more than dozen who committed to pulling the products from their shelves, following an NGO campaign focused on the hazards the two solvents posed. Walmart committed to doing so by February of this year, and Amazon by 1 March.

But as was the case during a January investigation into five other major retailers, SCHF discovered noncompliance with the commitments after these deadlines.

In the case of Walmart, SCHF and its partners identified 90 pages on Walmart.com for products that "definitely or likely contained" either methylene chloride or NMP. A visit to Walmart retail locations found two products containing methylene chloride or NMP, on shelves in Illinois and Oregon.

Meanwhile, they found 59 such products being sold through Amazon.

With respect to Walmart, SCHF said it notified the company of the violations between 11-15 March. And while it took over a week in certain cases, by 21 March all of the listings in question had been removed.

Amazon removed the listings within 48 hours of notification by the NGO, added SCHF.

This month, the US EPA issued a final rule banning methylene chloride from consumer products. A retail prohibition comes into force 180 days after the effective date of the rule.

SCHF is among the organisations, however, that have criticised the scope of the ban, saying it only covers consumer products, especially considering that many major retailers had already committed to pulling the products.

E&E News

9th Circuit set for chlorpyrifos clash

<https://www.eenews.net/greenwire/2019/03/26/stories/1060129435>

Ellen M. Gilmer

Tuesday, March 26, 2019

The Trump administration heads to federal court today to fight a 2018 ruling that required EPA to crack down on the pesticide chlorpyrifos.

The 9th U.S. Circuit Court of Appeals will hear oral arguments this evening in a highly anticipated rehearing en banc — before 11 active judges on the court.

The court is weighing whether to reverse a three-judge panel's August decision requiring EPA to ban the farm chemical on food crops. EPA science has linked the pesticide to neurological problems in children.

The 9th Circuit panel concluded the Trump administration failed to justify its 2017 decision to reject a proposed ban that public health advocates have pushed for years.

Government officials then asked the 9th Circuit to revisit the ruling and notched a notable victory in February when that request was granted (Greenwire, Feb. 7).

Trump-appointed Justice Department lawyer Jonathan Brightbill is arguing the case for EPA today.

The League of United Latin American Citizens and a coalition of farm, labor and environmental groups opposing EPA in the courtroom will be represented by Earthjustice lawyer Patti Goldman. New York Deputy Solicitor General Andrea Oser is representing a coalition of states pushing for a chlorpyrifos ban.

Documents obtained under the Freedom of Information Act by the Center for Biological Diversity and detailed in a New York Times investigation indicate the Fish and Wildlife Service found chlorpyrifos also posed jeopardy to 1,399 endangered species.

Pesticide makers and agriculture groups have argued that banning the chemical would derail many American food crops that rely on it.

The 9th Circuit will stream today's oral arguments online, beginning at 5:30 p.m. EDT.

Politico

EPA may thwart efforts by states to set stricter pesticide rules

<https://www.politico.com/story/2019/03/26/epa-pesticide-rules-1292061>

Liz Crampton

Tuesday, March 26, 2019

State regulators are worried that the Environmental Protection Agency is getting ready to override them on a host of pesticide regulations by negating stricter rules intended to curb crop damage or prevent environmental hazards from pesticides.

The EPA quietly announced last week that it was considering a new way to handle requests by states that want to impose stricter rules or extra training than the federal government mandates on pesticides. The EPA said it won't make any changes this growing season and will have a public comment period before changes are made, but the agency said it was evaluating "the circumstances under which it will exercise its authority to disapprove those requests."

States can seek additional restrictions from the EPA for various reasons, such as accounting for local pests or environmental concerns. But the EPA noted that some requests it gets are to "narrow the federal label."

That can be when a state sets a more restrictive cut-off date for when pesticides can be applied. Or, a state can set additional training and certification for pesticide applicators outside the range of EPA's requirements.

Rose Kachadoorian, president of the Association of American Pesticide Control Officials, told POLITICO she doesn't see what problem the agency is trying to address, adding that she believes the existing system is working well.

"A lot of these states want to ensure the continued availability of a technology," she said, stressing that making adjustments would limit states' rights. "By having the ability to have increased training, cut-off dates and other restrictions, it's actually enabling states to use that technology and they want to be able to use it."

"We look forward to a robust public dialogue on this matter," an EPA spokesperson said in a statement.

The biggest change could affect how state regulators have stepped in to restrict dicamba, a herbicide developed by Monsanto and BASF to combat pigweed and other undesired plants that have become resistant to Monsanto's flagship weedkiller Roundup.

Dicamba is commonly applied to soybeans in the Midwest and South. For instance, Illinois announced this month five restrictions beyond the federal guidelines for the 2019 growing season, such as a June 30 cutoff date for spraying dicamba, and prohibition of spraying dicamba when the wind is blowing toward nearby residential areas.

The EPA says it receives about 300 requests a year from states looking to adjust federal regulations under so-called section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA. The agency says it has the authority to set guidelines for how and when farmers can apply pesticides to their fields, under what's referred to as the federal label.

But last week's notice seems to suggest that the EPA has a problem with states' efforts to impose more regulations "to narrow the federal label, such as to add a more restrictive cut-off date, to add training and certification requirements, or to restrict the use directions by limiting the number of treatments permitted by the federal label."

The EPA notification said it "will make every effort to work with the states on the 24(c) program, but if there is the need, the [EPA] Administrator may suspend a state's registration authority due to lack of, or failure to exercise adequate control by the state."

The EPA provision is not the only pesticide regulation tool states have. The Arkansas State Plant Board, which oversees one of the nation's largest soybean-producing states, faced intense pressure from agrichemical companies after it took steps to restrict dicamba use amid reports of millions of acres of damage caused to crops not resistant to the herbicide. Monsanto, the maker of dicamba, promptly sued the state board before losing in court.

But those restrictions were developed under the state's rule-making authority, so they wouldn't be affected by any changes the EPA may make in section 24(c) rules, an Arkansas Department of Agriculture spokesperson confirmed. Other states, like Tennessee, however, did file a request with the EPA to impose stricter rules on dicamba use.

If the EPA decides to step in to overrule states on certain restrictions, Bayer, which recently purchased Monsanto and its product lines, could be one of the main beneficiaries of that change.

The company, which has been tangled in lawsuits and other battles over dicamba drift, argues that crop damage is related to farmers misapplying the product, and that its herbicide is safe to use. Bayer has said that additional state restrictions are unnecessary.

In October, the EPA conditionally approved the re-registration of XtendiMax, Bayer's dicamba product. It continues to be used by farmers as long as they abide by certain limitations.

EPA's approval of dicamba "reaffirms that this tool is vital for growers and can continue to be used safely according to federal label directions," a Bayer spokesman said in a statement provided to POLITICO. "There is simply no scientific basis for state-level restrictions on this technology."

Kachadoorian, who also serves as pesticide program manager at the Oregon Department of Agriculture, says states plan to share their concerns with EPA ahead of any potential rule changes.

“This has concerned a lot of states that EPA is now taking a focus on that because we rely on this as a mechanism to help ensure crop safety, environmental safety,” she said.

The Beverly Review

EPA investigating after Durbin relates concerns

http://www.beverlyreview.net/news/top_story/article_72203532-4fdf-11e9-a006-1b71550150d2.html

Kyle Garmes

Tuesday, March 26, 2019

The U.S. Environmental Protection Agency (EPA) is conducting an investigation of potential soil and groundwater contamination in Mt. Greenwood, including a business in the neighborhood.

The investigation comes after residents voiced concerns to elected officials about the possible release of hazardous, cancer-causing substances from the business.

Residents claimed that Mt. Greenwood Cleaners, 3547 W. 111th St., released chemicals that are responsible for several cancer diagnoses in the area.

According to an EPA spokesperson, U.S. Sen. Dick Durbin contacted the EPA last year relaying local concerns and requesting an investigation.

A sign at the front counter of Mt. Greenwood Cleaners on March 22 announced that the business is moving, and an employee said the new location will not be associated with Mt. Greenwood Cleaners.

According to the EPA, the investigation is focused on possible releases of substances including perchloroethylene (PCE)—also known as tetrachloroethylene and tetrachloroethene—trichloroethylene and vinyl chloride.

According to the EPA, PCE is a nonflammable colorless organic liquid with a mild, chloroform-like odor. It is used in the textile industry, as a component of aerosol dry-cleaning products, as a metal degreasing solvent and as a chemical intermediate.

In groundwater, it can biodegrade into trichloroethylene and vinyl chloride.

It can harm the nervous system, liver, kidneys and reproductive system, and it may be harmful to unborn children. The EPA has classified it as a likely human carcinogen.

It is regulated in drinking water in the U.S. at a maximum level of .005 micrograms per liter.

A group of residents who have united on social media as the Mt. Greenwood Safety Committee has hosted two meetings at 115 Bourbon Street in Merrionette Park in recent months and voiced concerns about Mt. Greenwood Cleaners. They cited a 2001 report that claimed water in Mt. Greenwood had an unusual amount of PCE—1,790,000 micrograms per kilogram; a kilogram is about the same as a liter.

The first meeting was held in October 2018, the most recent in February, when a committee leader expressed gratitude to Durbin for helping residents.

According to the EPA, Durbin sent the letter on Dec. 11, 2018, and cited a Freedom of Information Act request seeking documents from the EPA in which it found high levels of PCE at Mt. Greenwood Cleaners during on-site remediation.

Durbin also cited a Chicago Department of Health (CDH) study in 2014 that found Mt. Greenwood and nearby neighborhoods had higher than usual reports of breast, lung and prostate cancers.

His letter expressed concern about the EPA findings.

"Due to the dangerous nature of these chemicals, it is important to take seriously the concerns of the community," Durbin wrote. "As many families within the Mt. Greenwood community have lost children to cancer in recent years, it is essential to examine carcinogenic chemical discharges near the relevant facilities."

Several children from Mt. Greenwood have died from various types of pediatric cancer in recent years; however, at a Mt. Greenwood Safety Committee meeting, parents of two children said the environment was not the cause of their children's cancers.

According to the EPA spokesperson, it is working on the investigation with the Illinois EPA—the former lead agency on the site cleanup—the CDH, Illinois Department of Health, and Agency for Toxic Substances and Disease Registry.

According to the spokesperson, the investigation will take several months to complete, and EPA officials plan to meet with local residents to share information from the investigation.

EPA

CNN

New York Times: Acting interior secretary worked to block report on endangered species

<https://www-m.cnn.com/2019/03/26/politics/interior-secretary-nominee-david-bernhardt-endangered-species/index.html?r=https%3A%2F%2Fwww.google.com%2F>

Devan Cole

Tuesday, March 26, 2019

Washington (CNN) — While serving as the Interior Department's deputy secretary, President Donald Trump's current pick for the department's top post led an effort to stop the release of a report on the risks pesticides pose to endangered species, The New York Times reported Tuesday.

Citing 84,000 pages of department documents obtained by the paper via Freedom of Information Act requests, the Times reported that in October 2017, David Bernhardt directed political appointees at the department to block a report from the Fish and Wildlife Service -- which is under the control of the department -- that found two pesticides "were so toxic that they 'jeopardize the continued existence' of more than 1,200 endangered birds, fish and other animals and plants, a conclusion that could lead to tighter restrictions on use of the chemicals," according to the paper.

The Times said that instead of releasing the report, the appointees, at the direction of Bernhardt, "set in motion a new process intended to apply a much narrower standard to determine the risks from the pesticides."

The paper reported that the new approach from Bernhardt, a former fossil fuels lobbyist who currently serves as the department's acting secretary, was "one that pesticide makers and users had lobbied intensively to promote."

Citing department records, the Times said that as deputy secretary, Bernhardt "had nine meetings or calls on his schedule with Fish and Wildlife staff in October and November 2017, and helped write the letter saying the Interior Department was no longer prepared to release the draft."

The Interior Department did not respond to CNN's request for comment Tuesday on Bernhardt's involvement in the report.

The paper said the report addressed three popular pesticides, including malathion and chlorpyrifos, which are manufactured by FMC Corp. and Dow AgroSciences, respectively.

Wendy Cleland-Hamnett, a former official at the Environmental Protection Agency who at the time ran the office in charge of toxic chemicals and pesticides, told the Times that the new approach "is certainly similar to the pattern we saw in toxic chemicals as well, where the regulated industry had a more sympathetic ear in the new administration."

The EPA did not respond to CNN's request for comment Tuesday.

According to the Times, records show that Gary Frazer, the top endangered-species official at the Fish and Wildlife Service, participated in all the meetings with Bernhardt in 2017.

Frazer, the paper reported, "directed his staff to revise the study" and told the Times that Bernhardt's role was "entirely appropriate" and that "there was no arm-twisting of any kind."

In a statement to CNN, Laury Marshall Parramore, a spokesperson for the Fish and Wildlife Service, said the agency's "consultation with EPA on the re-registration of three pesticides is a highly complex undertaking," adding that they have "continuously refined (their) methodology."

"This has necessitated delaying the release of the draft biological opinions but will ultimately ensure that they are legally sound and based on the best available scientific information," she said. Bernhardt's nomination is set to be reviewed by the Senate this week.

E&E News

Region 6 chief transferring to HQ air office

<https://www.eenews.net/greenwire/2019/03/26/stories/1060129519>

Sean Reilly

Tuesday, March 26, 2019

Anne Idsal, who has headed EPA's Dallas-based Region 6 office since late 2017, is moving to agency headquarters to take a top slot in the Office of Air and Radiation.

Starting Monday, Idsal will be the office's principal deputy assistant administrator, EPA chief Andrew Wheeler said in an email to agency employees yesterday. The job had previously been held by Mandy Gunasekara, who left last month to work as an advocate for President Trump's energy policies (Greenwire, Feb. 7).

In her new post, Idsal "will work closely" with air chief Bill Wehrum "to guide EPA's air policy for the country," Wheeler wrote. Filling the Region 6 job on an acting basis will be David Gray, a career employee who now serves as deputy regional administrator.

Idsal's looming transfer was first reported by Politico. Former EPA Administrator Scott Pruitt had tapped her to head the Region 6 office in December 2017; besides Texas, the office encompasses Arkansas, Louisiana, New Mexico and Oklahoma (Greenwire, Dec. 11, 2017).

Idsal, a lawyer who is well-connected in Texas Republican circles, previously worked in Washington, D.C., as an aide to Sen. John Cornyn (R-Texas), both in his personal office and then on the Senate Judiciary Committee, from 2005 through 2007, according to her LinkedIn profile. Since returning to Texas, she has held a variety of jobs, including general counsel for the Texas Commission on Environmental Quality and chief clerk at the Texas General Land Office, a state agency whose duties include aiding in natural disaster recovery.

Besides striving to advance national Trump administration initiatives such as reducing childhood lead exposure, Idsal's stint as Region 6 chief has involved her in a predictable mix of hazardous waste, water and air quality issues, according to news articles and EPA press releases.

On the air front, her most notable work may be in furthering Texas regulators' efforts to replace an Obama-era regional haze reduction plan that would have required some coal-fired power plants to install sulfur dioxide scrubbers. Last August, Idsal signed off on the state's proposed alternative, which would substitute an emissions trading program (E&E News PM, Aug. 17, 2018).

While Texas officials objected that the Obama-era plan would have carried a long-term \$2 billion implementation price tag, critics of the state's approach say it would do nothing to limit power-sector emissions of sulfur dioxide that one analysis has linked to several hundred premature deaths each year (Greenwire, Oct. 30, 2018).

EPA is now weighing some 1,500 comments received on the proposal, while also briefing management "to reach decisions on issues raised in the comments," attorneys for the agency said in a status report filed in U.S. District Court for the District of Columbia last month in related litigation brought by environmental and conservation groups.

The Daily Caller

Duke University to Pay \$113M to Feds After Research Grant Fraud

<https://dailycaller.com/2019/03/26/duke-whistleblower-doi-grant-fraud/>

Luke Rosiak

Tuesday, March 26, 2019

A whistleblower at Duke University became a millionaire this week after exposing fraud at his university through a legal mechanism that lets people who recover money for taxpayers share in the profits.

Duke will pay the federal government \$112.5 million in a settlement that "resolves allegations that between 2006 and 2018, Duke knowingly submitted and caused to be submitted claims to the [National Institutes of Health] and to the [Environmental Protection Agency] that contained falsified or fabricated data or statements in thirty (30) grants, causing the NIH and EPA to pay out grants funds they otherwise would not have," the Department of Justice said Monday.

"The United States contends that the results of certain research related to mice conducted by a Duke research technician in its Airway Physiology Laboratory, as well as statements based on those research results, were falsified and/or fabricated," it continued.

The lawsuit shows that the researcher who falsified data is Erin N. Potts-Kant.

Duke's President Vincent Price and Provost Sally Kornbluth said in a message to students: "This is a difficult moment for Duke. This case demonstrates the devastating impact of research fraud and reinforces the need for all of us to have a focused commitment on promoting research integrity and accountability." (RELATED: Universities Allegedly Broke Law To Hide Receipt Of Chinese Propaganda Money)

Joseph M. Thomas, a former colleague of Potts-Kant, filed a False Claims Act suit against Duke, Potts-Kant and her supervisor. The lawsuit was filed under seal in federal court in 2014.

Duke said in a statement that at the time the lawsuit was filed, it had fired Potts-Kant for embezzling money from the university but did not yet understand "the extent of her research misconduct."

Since then, Duke did its own review of the research. "Following a detailed, three-year review of more than 50 potentially compromised research grants, Duke concluded that the technician had falsified or fabricated data that had been included in grant and payment requests submitted to the NIH and other agencies over the period of her employment. Duke also retracted scientific publications that relied on the data," Duke said. (RELATED: Universities Took \$600M From Muslim Nations While Also Receiving US Grants To Shape How US Teaches About Middle East)

Thomas was awarded \$33,750,000 for his role in bringing the fraud to light.

Known as a “qui tam” suit, the vehicle Thomas pursued allows a private citizen to pursue another party for defrauding the government. If the complainant wins, he shares a portion of the money that is recovered for taxpayers. The type of motion incentivizes citizens to safeguard taxpayer money as they would their own.

Department of Justice lawyers sometimes intervene and take over the case on behalf of the complainant, but that is not required.

The New York Times

Interior Nominee Intervened to Block Report on Endangered Species

<https://www.nytimes.com/2019/03/26/us/politics/endangered-species-david-bernhardt.html>

Eric Lipton

Tuesday, March 26, 2019

WASHINGTON — After years of effort, scientists at the Fish and Wildlife Service had a moment of celebration as they wrapped up a comprehensive analysis of the threat that three widely used pesticides present to hundreds of endangered species, like the kit fox and the seaside sparrow.

“Woohoo!” Patrice Ashfield, then a branch chief at Fish and Wildlife Service headquarters, wrote to her colleagues in August 2017.

Their analysis found that two of the pesticides, malathion and chlorpyrifos, were so toxic that they “jeopardize the continued existence” of more than 1,200 endangered birds, fish and other animals and plants, a conclusion that could lead to tighter restrictions on use of the chemicals.

But just before the team planned to make its findings public in November 2017, something unexpected happened: Top political appointees of the Interior Department, which oversees the Fish and Wildlife Service, blocked the release and set in motion a new process intended to apply a much narrower standard to determine the risks from the pesticides.

Leading that intervention was David Bernhardt, then the deputy secretary of the interior and a former lobbyist and oil-industry lawyer. In October 2017, he abruptly summoned staff members to the first of a rapid series of meetings in which the Fish and Wildlife Service was directed to take the new approach, one that pesticide makers and users had lobbied intensively to promote.

Mr. Bernhardt is now President Trump’s nominee to become interior secretary. The Senate is scheduled to hold a hearing on his confirmation Thursday.

This sequence of events is detailed in more than 84,000 pages of Interior Department and Environmental Protection Agency documents obtained via Freedom of Information requests by The New York Times and, separately, by the Center for Biological Diversity, an environmental group that sued the federal government to force it to complete the pesticide studies.

The documents provide a case study of how the Trump administration has been using its power to second-guess or push aside conclusions reached by career professionals, particularly in the area of public health and the environment.

The decision to block the release of the report represented a victory for the pesticide industry, which has industry allies and former executives sprinkled through the administration. Among those with the most at stake were Dow AgroSciences, a manufacturer of chlorpyrifos, which is used on dozens of fruits and vegetables, and FMC Corporation, a manufacturer of malathion, which is used against mosquitoes as well as chewing and sucking insects that attack a range of crops including tomatoes, strawberries and walnuts.

Dow, which was recently renamed Corteva, donated \$1 million to Mr. Trump’s inauguration committee. E.P.A. and Interior Department records show that top pesticide industry executives had regular access to senior agency officials,

pressing them to reconsider the way the federal government evaluates the threat pesticides cause to endangered species.

A Dow spokesman said the shift in policy was unrelated to the \$1 million contribution. The new approach will result in “a better understanding of where and how pesticides are being used,” said Gregg M. Schmidt, a Corteva spokesman.

Spokesmen for FMC and Adama — the other primary makers of the pesticides being studied — as well as their lawyers and CropLife America, the trade group that represents them, declined to comment.

Asked if Mr. Bernhardt’s intervention was appropriate or motivated by a desire to serve the industry’s interests, an Interior Department spokeswoman said his actions had been “governed solely by legitimate concerns regarding the legal sufficiency and policy.”

Before he joined the Trump administration, Mr. Bernhardt worked as a lawyer and lobbyist representing clients including the oil and gas industry. He was frequently paid to challenge endangered species-related matters, including one involving a tiny silvery blue fish called the delta smelt whose protection by the federal government has resulted in limits on water use by California farmers.

Agency records suggest Mr. Bernhardt, after having had only limited involvement in the issue, had nine meetings or calls on his schedule with Fish and Wildlife staff in October and November 2017, and helped write the letter saying the Interior Department was no longer prepared to release the draft.

Wendy Cleland-Hamnett, the E.P.A. official at the time who ran the office in charge of toxic chemicals and pesticides, said the sudden change in regulatory philosophy was part of a broader trend across the government after Mr. Trump’s election.

“It is certainly similar to the pattern we saw in toxic chemicals as well, where the regulated industry had a more sympathetic ear in the new administration,” said Ms. Hamnett, who left the E.P.A. in late 2017, after a 38-year career with the agency. “And that resulted in a shift in approach as to how these issues would be handled.”

Gary Frazer, the top endangered species official at the Fish and Wildlife Service, whose schedule says he participated in all nine of the late 2017 discussions with Mr. Bernhardt, and who subsequently directed his staff to revise the study, said he did not believe the change in direction was politically driven.

“It was an entirely appropriate role,” he said in an interview, as two of the agency’s public affairs officials listened in. “There was no arm-twisting of any kind.”

The endangered species review is required as part of the re-registration of pesticides, a process that occurs every 15 years.

Experts at the Fish and Wildlife Service and the Commerce Department’s National Marine Fisheries Service were supposed to determine if any of the pesticides might “jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species,” a standard created under federal law.

Much of the work focuses on questions like whether a wildfire management program in the Florida Everglades hurt endangered species such as the American crocodile or the West Indian manatee. The Fish and Wildlife Service rarely makes so-called jeopardy findings; a 2015 study of nearly 7,000 cases found that only two concluded with a finding that a species was in jeopardy.

The pesticide industry, as well as groups representing farmers who rely on its products, began to mobilize as the endangered species review got underway during the Obama administration.

With Mr. Trump's election, the industry escalated its campaign. In April 2017, its lawyers sent a letter to Ryan Zinke, then the interior secretary; Scott Pruitt, then the E.P.A.'s administrator; and the commerce secretary, Wilbur Ross, asking them to "direct that any effort to prepare biological opinions," as the process is called, "be set aside," arguing that the analysis was "fundamentally flawed."

The industry's central argument was that the federal scientists were not sufficiently taking into account the difference between how the pesticides could legally be used and how they were actually used.

Staff members at the Fish and Wildlife Service, emails show, did have access to actual pesticide usage, as well as other information, such as measurements of pesticide concentrations found in salmon-bearing streams in Washington State.

But the agency staff — working from dozens of field offices like Hawaii and Maine as well as the headquarters — generally built its predictions of a "jeopardy" threat to endangered species by assuming the pesticides were being used to the maximum extent possible as allowed by their labels.

That is because "unlike most other types of product labels, pesticide labels are legally enforceable," according to E.P.A. policy. And historic usage data, the agency staff said in its documents, is not sufficient to predict how these pesticides might be used — and cause harm — in the coming 15 years.

The pesticides, particularly chlorpyrifos and malathion, are "high toxicity" for all animals, and their effect on endangered species would be both direct and indirect, via contamination of food sources, for example, the staff concluded. The E.P.A. has separately considered banning chlorpyrifos because of potential harm to humans.

The Fish and Wildlife staff cited the San Joaquin kit fox, a tiny animal that weighs about five pounds, with a slim body, large ears and a long, bushy tail. Decades ago, it inhabited large parts of California's

San Joaquin Valley, an area today of intensive farming and pesticide use. But most of those fox populations are now gone, in part because pesticides like diazinon contaminated birds and grasses the foxes fed on, the agency concluded.

The Cape Sable seaside sparrow, another endangered species located mostly now in Florida, was found to be in jeopardy as a result of drifting sprays of chlorpyrifos. "For many vulnerable species, a single exposure could be catastrophic," an October 2017 summary of the staff's findings said.

Agency records show repeated contacts in early 2017 by the pesticide industry with administration officials. Among those targeted, the emails show, was Daniel Jorjani, a top Interior Department lawyer who had spent six years working for groups connected to the billionaire brothers Charles G. and David H. Koch.

The Dow Chemical Company's plant in Midland, Mich. Dow AgroSciences is a manufacturer of chlorpyrifos, one of the pesticides under scrutiny by the Fish and Wildlife Service. Credit Laura McDermott for The New York Times

Aaron Hobbs, a onetime lobbyist for CropLife, the leading pesticide industry trade association, who now works for an affiliate of the industry-funded group, reached out to Mr. Jorjani and invited him to an April 2017 meeting with industry officials to discuss the endangered species effort — shortly after sending the letter asking the agency to kill the Fish and Wildlife Service's work. He followed up again in July in an attempt to set up another meeting.

Top officials from the E.P.A. and Interior and Agriculture Departments began a series of meetings in June 2017, often involving representatives from the White House.

Among the other participants in these meetings, the records show, was Rebeckah Adcock, who until April 2017 had been a director of government affairs and registered lobbyist for CropLife and who now works as a senior adviser at the Agriculture Department.

Ms. Adcock joined the discussions even though the ethics agreement she signed said she would not participate “personally and substantially in any particular matter” involving CropLife for one year. An Agriculture Department spokesman said this did not violate that ban because she had not specifically lobbied on endangered species matters for CropLife.

Even as these meetings were taking place, staff members inside the Fish and Wildlife Service were wrapping up the enormous task of assessing the threat presented by these pesticides, email records show.

The team had concluded that chlorpyrifos put 1,399 species — a mixture of animals and plants — in jeopardy, while malathion put 1,284 of them in jeopardy and diazinon, a third pesticide that was evaluated, placed 175 species in jeopardy. There are 1,663 species listed as endangered or threatened in the United States, meaning that two of the pesticides may be putting most of them in jeopardy. (This information, agency officials said, was accidentally released in a Freedom of Information response obtained by The Times. They intended to keep this tally a secret, because the assessment was not final.)

The agency staff was not recommending that the pesticides be banned. Instead, they were proposing changes in how the pesticides could be used, including possible restrictions on their use in areas where endangered species are found, or at certain times of year, the documents say.

Lawyers who work for the interior secretary’s office wanted a very different approach. They advocated abandoning the presumption that use of a pesticide by a farmer or a golf course might directly cause the death of or harm to an endangered species, officials said.

Their argument was that because farmers, for example, do not manufacture the pesticide, their use of it means that any harm caused is an indirect effect, as defined under federal law. There is a much higher standard of proof needed to demonstrate that an indirect effect has harmed an endangered species. The law requires that this harm be shown to be “reasonably certain to occur.” The revised approach is almost certainly going to result in fewer plants and animals being judged to be in jeopardy of extinction as a result of continued pesticide use.

The shift in approach goes far beyond a single Fish and Wildlife Service analysis. In early 2018, Mr. Pruitt, Mr. Zinke and Mr. Ross agreed to work toward a new framework for all endangered species evaluations, a move that CropLife called “a positive step towards solving this important and complex issue.”

Documents show that the administration does not now expect to make public any draft results of the revised assessment until April 2020, two and a half years later than had been planned.

OIL

Alaska Public Media

Groups say they will sue unless EPA renews effort to restrict oil spill dispersants

<https://www.alaskapublic.org/2019/03/25/groups-say-they-will-sue-unless-epa-renews-effort-to-restrict-oil-spill-dispersants/>

Elizabeth Harball

Monday, March 25, 2019

A coalition of environmental and public health advocates say they will sue the federal government unless it takes action to restrict the use of dispersants for oil spill cleanup.

The plaintiffs say the federal Environmental Protection Agency is shirking its duty to update its rules so that they reflect the latest science on how dispersants affect the environment. They argue the update is especially urgent now that the Trump administration is moving to expand offshore oil leasing, including in Arctic waters.

The news comes a day after the 30th anniversary of the Exxon Valdez oil spill in Prince William Sound, when thousands of gallons of dispersant were used.

EPA did propose stricter standards for dispersants in 2015. But the agency has not moved to finalize those standards since then. The plaintiffs say they will file suit in 60 days unless the agency renews its work on the issue.

"We're very concerned about the lack of oversight and regulation that takes into consideration this newer science, and EPA is definitely long overdue in fulfilling their responsibility to regulate these chemicals," said Pam Miller, executive director of the Alaska Community Action on Toxics.

Alaska Community Action on Toxics is one of the plaintiffs in the case, along with the Homer-based advocacy group Cook Inletkeeper, Nuiqsut resident Rosemary Ahtuanguaruak, La. resident Kindra Arnesen and Calif.-based environmental advocacy group the Earth Island Institute.

In a statement, EPA said the agency is reviewing the notice of intent to sue, but declined to comment further.

Dispersants don't get rid of oil. They're used to help oil dissolve in the water column so it doesn't stay on the water's surface or wash on shore.

The American Petroleum Institute, a national oil industry trade group, supports their use. API criticized EPA's 2015 proposal, saying in a comment letter to the agency that it was "substantially problematic for all stakeholders, including the response community, which is required to carry out an effective spill response."

Miller has the opposite view.

"I think it could have been much stronger," Miller said.

Dispersants are highly controversial. Research following their use during the 2010 Deepwater Horizon disaster has deepened concerns about how they affect species and workers.

The Prince William Sound Regional Citizens Advisory Council, a watchdog group, opposes the use of dispersants in Alaska until there is enough evidence to prove they are safe and effective.

Oil spill response teams in Alaska are allowed to use dispersants, but there are standards restricting where and when they can be used. Those standards were updated in 2016, with input from EPA.

WTOP

Groups: EPA has dragged heels on oil dispersant rules

<https://wtop.com/national/2019/03/groups-epa-has-dragged-heels-on-oil-dispersant-rules/>

Associated Press

Monday, March 25, 2019

NEW ORLEANS (AP) — Environmental groups and women from Alaska and Louisiana say the Environmental Protection Agency has dragged its heels on issuing rules for oil spill dispersants, and they're ready to sue to demand them.

They say dispersants such as Corexit, used during the Exxon Valdez and BP oil spills, were more toxic to people and the environment than oil alone but, nearly four years after taking public comments about such rules, the agency hasn't acted.

"We depend on feeding our families from the ocean. We need the ocean to be a clean environment for our animals," Rosemary Ahtuanguaruak, a plaintiff from Alaska, said in a telephone interview. With the Trump administration considering an oil and gas lease sale in Alaska's Beaufort Sea, she said, people fear both spills and dispersants.

The EPA said it is reviewing a letter sent Monday to Administrator Andrew Wheeler, saying the people and groups will sue unless the agency acts within 60 days.

The letter is a legally required step before filing suit under the Clean Water Act. This lawsuit would be filed in Washington, said Jack Siddoway, a third-year law student in the University of California-Berkeley Environmental Law Clinic.

The clinic is representing Ahtuanguaruak (ah-TOON-gah-rook), who lives in the Inupiat village of Nuiqsut (noo-IK-sut); Kindra Arnesen of Buras (BYOO-ruhs), Louisiana; Alaska Community Action on Toxics; Cook Inletkeeper, also from Alaska; and Earth Island Institute's ALERT project, which is based in Berkeley.

Arnesen said the 2010 BP Deepwater Horizon spill off Louisiana severely damaged her family's commercial fishing business. Before the spill, she said, at times there were "acres and acres" of baitfish and rafts of larger fish. "After the spill those disappeared. It was like going through a water desert," she said.

She also blames it for her family's migraines, respiratory problems and rashes so deep they caused open wounds and left scars. She said their son seems to have recovered completely, but her husband still has major problems and she and her daughter are still living with lower levels of illness.

She said dispersants break up oil so it's not easily seen. "To my mind, it's used to create a situation where it's out of sight, out of mind, but not out of the way," she said.

The EPA's oil spill response guidelines haven't been updated since 1994 to reflect research on dispersant effects after the Exxon Valdez broke open on rocks in Prince William Sound in 1989 and BP's Gulf of Mexico spill, according to the notice of intent to sue.

"Given the history of offshore oil drilling, it is simply a matter of when — not if — a devastating oil spill will occur," the letter states.

The public comment period on dispersants ended April 22, 2015, Siddoway said in a telephone interview.

He said he had made a freedom of information request about what EPA has done since April 2015 to further the rulemaking.

"That has been delayed due to the government shutdown, and we're still waiting for a response," he said.

He said revision of oil spill guidelines is listed as a long-term action on "the unified agenda, a semi-yearly kind of laundry list that EPA's working on." But that's nothing new, he said: "It's been there in various forms since 2001, even before the rulemaking was put into play."

The current EPA rules let companies "essentially do whatever they want when it comes to dispersant," Siddoway said.

If the agency sets rules continuing that policy, he said, the rules themselves can be challenged.

"Right now we can't make a challenge to substance ... because the rule is still pending," he said.

SUPERFUND

Bloomberg Environment

'Dead and Buried' Corporations May Face Superfund Liability

<https://news.bloombergenvironment.com/environment-and-energy/dead-and-buried-corporations-may-face-superfund-liability>

Peter Hayes

Tuesday, March 26, 2019

- Federal courts divided
- Plaintiffs hope to find old insurance policies

Three related paper companies that were dissolved decades ago may face Superfund liability for the cleanup of a former paper mill in Dayton, Ohio.

HPP Inc., formerly Howard Paper Partner Inc.; HPM Investors Inc., formerly Howard Paper Mills Inc.; and Harrison Holdings Limited Partnership can't escape liability merely because they are "dead and buried" corporations, the Southern District of Ohio said, ruling on summary judgment.

Though it may be difficult to collect damages from the companies, it is possible that old insurance policies could cover environmental liabilities, the court said.

The plaintiff, Garrett Day LLC, also hopes to pursue successor liability against Fox River Paper Co., which acquired the assets of the defunct companies through merger.

The court rejected the argument that "dead and buried" corporations—those that are dissolved without leaving behind any assets—are no longer "persons" subject to suit under the Superfund law.

It is an issue that has divided the federal district courts. Courts in Florida, Utah, and Ohio have rejected such claims; courts in Indiana and Georgia have allowed them.

The case involves contamination at the former Howard Paper Mill site, which operated from 1896 until 1996 under many different owners and operators.

Garrett Day bought the abandoned property in 2010. It was contaminated with a variety of hazardous substances, including asbestos, trichloroethylene, and polychlorinated biphenyls.

Garrett Day worked with the state to clean up the site and then sued former owners and operators to recover cleanup costs.

Judge Walter H. Rice issued the ruling.

Ice Miller LLP represents Garrett Day.

Coolidge Wall Co. LPA represents the defunct companies.

The case is Garrett Day, LLC v. Int'l Paper Co., S.D. Ohio, No. 15-cv-36, 3/25/19.

Bloomberg Environment

Puerto Rico Development Corporation Faces Superfund Tab

<https://news.bloombergenvironment.com/environment-and-energy/puerto-rico-development-corporation-faces-superfund-tab>

Peter Hayes

Tuesday, March 26, 2019

- Third-party liability defense doesn't fly
- No showing third party is sole contamination cause

Puerto Rico's development corporation can't shake off Superfund liability for a site it owns by arguing that the source of contamination is unknown, the District of Puerto Rico said.

The Puerto Rico Industrial Development Company—a government-owned corporation that promotes investment in the island—can't claim a third-party defense to liability absent a showing that a third party was the sole cause of the contamination, the U.S. District Court for the District of Puerto Rico said March 25.

A party may be immune from suit under the Superfund law if it can show the contamination was caused by the acts or omissions of a third party with whom it has no contractual relationship.

PRIDCO argued that the "likely source of contamination is not within the PRIDCO property, but rather, at the upgradient property."

But the argument that a third party likely caused or contributed to the contamination is insufficient to establish a third-party defense, the court said.

The court, however, denied the EPA's request to approve its claim for \$5.4 million in cleanup costs.

The U.S. must specify which response actions underlie the costs for which PRIDCO is allegedly liable, the court said.

PRIDCO purchased the Maunabo, Puerto Rico, property at issue in 1964.

The groundwater at the site is contaminated with volatile organic compounds, and contamination has spread off site.

Judge Francisco A. Besosa issued the opinion.

Quinones & Arbona, PSC, and Casillas, Santiago & Torres, LLC represent PRIDCO.

The case is United States v. P.R. Indus. Dev. Co., 2019 BL 103412, D.P.R., No. 15-2328, 3/25/19.

Bloomberg News

Midwest Floods Have Reached Superfund Sites in Three States, EPA Says

<https://www.bloomberg.com/news/articles/2019-03-26/midwest-floods-reach-superfund-sites-in-three-states-epa-says>

Christopher Flavelle

Tuesday, March 26, 2019

Major flooding across the U.S. Midwest has reached at least eight Superfund sites in three states, and kept EPA staff from determining whether any are leaking toxic chemicals as a result.

The Environmental Protection Agency said it is unable to access the sites containing arsenic, benzene, cyanide and other toxins, because of the floodwaters inundating the facilities.

"Due to the current state of flooding impacts to roads, it is not safe for EPA personnel to inspect impacted sites," Maggie Sauerhage, an agency spokeswoman, said by email. "At this time, we have no indication of contaminant releases from impacted sites."

Environmental advocates said that's not good enough.

"That's a public health threat," said Elena Craft, senior director for climate and health at the Environmental Defense Fund. "We're not getting in there to do the testing."

The affected sites include a defunct ordnance plant, a chemical disposal facility and a former manufactured-gas plant, and some contain radioactive waste in addition to dangerous chemicals. At least three of those sites already faced the risk of contaminated groundwater movement before the flooding started earlier this month, according to EPA data.

Nebraska

Parts of the Nebraska Ordnance Plant, a 17,000-acre former munitions plant just west of Omaha, are “inaccessible,” Sauerhage said, citing information from the U.S. Army Corps of Engineers. The site’s treatment plant “was down for a few days,” but is now operating again, she said.

At the Iowa-Nebraska Light & Power Co. site, in the small city of Norfolk, “fieldwork is delayed due to road closures,” Sauerhage said. Even before this month’s floods, the contaminated groundwater beneath the site was already moving toward Norfolk’s municipal well field half a mile away, according to information on the EPA’s website.

A third Nebraska Superfund site, identified simply by its location at Old Highway 275 and 288th Street in the town of Valley, consists of a 2.5-mile-long groundwater plume of volatile organic compounds, including trichloroethene, five feet below the surface. Even before the floods, the EPA couldn’t tell if that groundwater plume was contained; Sauerhage wrote that “fieldwork is delayed due to road closures.”

Iowa

The Railroad Avenue Groundwater Contamination Site, which is part of the West Des Moines water treatment plant, had “some standing water,” Sauerhage wrote.

In the city of Camanche, just up the Mississippi from Davenport, a former landfill called Lawrence Todz Farm is “inaccessible due to road closure,” according to Sauerhage. Even before the floods, the EPA said there was “insufficient data” to know if the site’s contaminated groundwater, which includes arsenic, was under control.

The Mid-America Tanning Company site, near Sergeant Bluff, contained more than 500 gallons of sulfuric acid when the facility stopped operating in 1989, according the EPA. The agency removed the site from its priority Superfund list in 2004, but said that maintenance and monitoring of the cleanup are ongoing. “Some portions of the site may be under water, but no major impacts anticipated,” Sauerhage said.

Missouri

In Kansas City, the Conservation Chemical Co. site, which stored and disposed chemicals from the 1960s to the 1980s, “is partially flooded,” according to Sauerhage. The EPA’s website says groundwater on the site contains cyanide and other dangerous compounds.

At the St. Joseph City Landfill, just north of Kansas City, “fieldwork is delayed due to road closures,” Sauerhage said.

Sauerhage said the agency is working with state and local officials to gather information about the sites. State environmental agencies in Nebraska, Iowa and Missouri didn’t immediately respond to requests for comment.

The Federal Emergency Management Agency, asked for comment on how it’s protecting first responders and residents from possible chemical releases from the Superfund sites identified by the EPA, didn’t immediately respond.

The risk of chemical exposure is likely to expand to other sites around the region. Federal weather officials warned this week of “record flooding from now through May.”

The EPA has long warned that more intense flooding caused by climate change threatened to dislodge chemicals around Superfund sites. In 2014, the agency released a so-called Climate Adaptation Plan, which said that “inundation and flooding may lead to transport of contaminants through surface soils, ground water, surface waters and/or coastal waters.”

As the threat from climate change grows, “there is a critical need for more information,” Craft said. “EPA’s just not fulfilling its mission in terms of providing the public health protection that they’re obligated to.”

— With assistance by Jennifer A Dlouhy, Brian K Sullivan, and Kevin Varley

The Salt Lake Tribune

Century-old silver mines are long gone. But tainted tailings are still polluting Park City. Now the feds are suing to clean up the Superfund site.

<https://www.sltrib.com/news/politics/2019/03/26/century-old-silver-mines/>

Nate Carlisle

Tuesday, March 26, 2019

What are now world-class ski runs used to be profitable mountainsides where 19th-century miners dug silver out of the dirt and mud.

The materials left over from that mining and processing are called tailings, and a lot of them were dumped into Silver Creek — the stream that runs from the south side of Park City northeast to Wanship. The federal government has had plans to clean up the tailings and the poisonous chemicals that come with them.

The plan has stalled, partly because the United Park City Mines Co. hasn’t followed through on a 2014 agreement to scrub the biggest tailings site and owes the federal government for work that has been done, according to a lawsuit filed Monday in federal court. The U.S. Department of Justice is asking a judge to order the mine company to pay what it owes and declare the company liable for future cleanup costs.

A lawyer for United Park City Mines, Chris Hogle, said he was still reading the lawsuit and declined comment Tuesday morning.

The lawsuit also describes the level of pollution still sitting around Utah’s top ski town from a century of silver mining, the last of which ended in 1982.

The complaint says the mine company owes about \$900,000 to the Environmental Protection Agency and the Bureau of Land Management — with interest accumulating — for efforts to clean up the tailings site. The lawsuit warns that even if the mine company pays what it owes, the cleanup tab is probably going to continue to rise.

The government’s complaint says tailings — dating back to mining operations from the late 1880s — still can be found along a six-mile stretch of Silver Creek. In some spots, the tailings run as deep as 9 feet below the surface.

In one spot, the court filing says, the amount of arsenic in the soil is 10,308 times above the concentration the EPA allows for residential use. There also are high levels of zinc, lead and cadmium in the soil.

The chemicals have seeped into groundwater, the filing says, and raised contaminants well above the acceptable levels for drinking.

The lawsuit is peppered with mining names now familiar to Park City residents and visitors as names of streets, subdivisions and chairlifts. The company being sued, the government says, is the successor to the Silver King Mining Co., the Ontario Silver Mining Co., the Daly West Mining Co. and the Judge Mining and Smelting Co.

The Superfund site where most of the tailings collected is called Richardson Flat. It’s near the junctions of U.S. 40 and Utah 248. The site is also beside a park-and-ride lot for commuters and skiers.

The federal government sued United Park City Mines in 2017 to force it to provide documentation of whether it could pay the cleanup costs. That case is on appeal.

WATER

E&E News

Court keeps Obama-era rule in effect in Ohio, Tenn.

<https://www.eenews.net/greenwire/2019/03/26/stories/1060129469>

Ariel Wittenberg

Tuesday, March 26, 2019

A federal court won't stay the Obama-era Clean Water Rule in Ohio and Tennessee, citing the Trump administration's rollback attempts.

U.S. District Judge Edmund Sargus Jr. for the Southern District of Ohio wrote that the 2015 regulation could not be stayed because Ohio and Tennessee had "failed to draw the Court's attention to any particularized harm that they will suffer while this matter remains pending."

That's in part because the Trump administration is working to delay, repeal and replace the Clean Water Rule, which sought to clarify which wetlands and waterways are protected by the Clean Water Act.

Sargus' opinion hints at the drama and confusion that have unfolded during the past two years as the Trump administration has struggled to eliminate the Clean Water Rule through various means.

The Obama-era regulation had been stayed by nationwide injunction by the 6th U.S. Circuit Court of Appeals shortly after it became finalized. But that stay was withdrawn after the Supreme Court ruled last fall that district courts had jurisdiction over lawsuits against the rule.

The Trump administration first proposed repealing the regulation in summer 2017 and issued a supplemental proposal a year later. The proposal has yet to be finalized.

In the meantime, the administration has sought to delay implementation of the Obama-era rule until 2020. That rule, which was finalized, has been stayed nationwide by district courts in South Carolina and Washington state. Those injunctions brought the Clean Water Rule back into effect in 22 states, including Ohio and Tennessee (Greenwire, Nov. 27, 2018).

But the Trump administration has since proposed a new definition of which wetlands and waterways are protected by the Clean Water Act, which would limit federal jurisdiction significantly.

Sargus said the Trump administration's repeated rollbacks left the court "unpersuaded" by Ohio and Tennessee's argument that the Clean Water Rule represented a "usurpation of the states of their sovereign rights and responsibilities" regarding state waters.

"While any violation of the Constitution is undoubtedly serious, the alleged offending action of the federal government has been rescinded, or at least, suspended by the same agency," he wrote. "The States' contention that compliance with the Clean Water Rule will continue to result in 'monetary losses' as they sort through which waters are covered by the challenged rule, is similarly unpersuasive."

InsideEPA

Judge's Rejection Of New CWA Rule Injunction Prolongs Policy 'Patchwork'

<https://insideepa.com/daily-news/judge%E2%80%99s-rejection-new-cwa-rule-injunction-prolongs-policy-%E2%80%98patchwork%E2%80%99>

David LaRoss

Tuesday, March 26, 2019

A federal district judge has rejected two GOP-led states' request to block enforcement of the Obama-era Clean Water Act (CWA) jurisdiction rule within their borders, prolonging a nationwide "patchwork" of CWA standards that has led to fights in courts and Congress over how to apply the law until EPA repeals and replaces the 2015 rule.

Separate from the judge's order rejecting the injunction request, California Democrats are attacking a recent Trump administration CWA jurisdiction determination as unlawfully narrow. And a recent filing in a pending Supreme Court case over criminal CWA violations urges a swift, definitive ruling from the justices on the law's reach.

Many environmentalist, industry and state observers have decried what they call the patchwork of CWA standards caused by litigation over the Obama-era rule and President Donald Trump's directive to undo it. And the March 25 court order underscores that the confusion is likely to continue until -- and possibly after -- a new CWA rule is in place.

In the order, Chief Judge Edmund A. Sargus Jr. of the U.S. District Court for the District of Ohio says the states of Ohio and Tennessee have failed to show that a preliminary injunction against the rule's enforcement is needed to stop an "imminent and irreparable harm" -- part of the four-prong test for an injunction.

Sargus' order marks the first time a federal court has rejected a request to halt implementation of the 2015 policy, marking potentially a major win for its defenders.

But the decision appears to contradict itself on the state of affairs for CWA jurisdiction. It notes that the Obama-era rule, known as the Clean Water Rule, is currently in force for 22 states including Ohio and Tennessee, yet also describes it as having been "rescinded, or at least suspended" and thus incapable of harming the states -- likely a reference to the Trump administration's bid to repeal and replace the rule, yet that process is still in the proposal stage.

While EPA and the Army Corps of Engineers suspended enforcement of the prior administration's policy through a rule issued in February 2018 that postponed its "applicability date" until 2020, that delay was struck down by two district courts and the agencies are not appealing those decisions. That means the 2015 standard applies in any state where its use has not been barred by an injunction -- the relief Ohio and Tennessee sought from Sargus.

The decision says, "while the states correctly indicate that the Clean Water Rule is effective in their boundaries due to the enjoinder of the Suspension Rule, the States have failed to draw the Court's attention to any particularized harm that they will suffer while this matter remains pending.

"The Court is unpersuaded by the States' argument that '[u]surpation from the States of their sovereign rights and responsibilities regarding intrastate waters that are not waters of the [United] States would constitute irreparable harm.' While any violation of the Constitution is undoubtedly serious, the alleged offending action of the federal government has been rescinded or, at least, suspended by the same agency."

The plaintiff states can continue their challenge to the 2015 rule on its merits even without a preliminary injunction. But they will have to continue enforcing its terms in CWA permits and other regulatory programs unless either a court overturns the rule or EPA and the Corps finalize one of their pending proposals to repeal or replace it.

Jurisdictional Determinations

With the nationwide patchwork still in effect, EPA and states continue to wrestle over how to determine whether specific waterbodies are subject to the CWA, as Democrats rail against what they see as the Trump administration's preference for narrow federal jurisdiction under the water law regardless of which rule applies in any particular case.

For instance, the agency is facing push-back from congressional Democrats on its recent move that reversed a proposed finding from Region 9 -- which covers California and other Pacific Coast states -- that would have labeled a former salt plant in Redwood City, CA as tidal marshland covered by the CWA. Instead, the region held it to be "fast land" exempt from permits, greatly easing the path for a planned residential development on the property.

California Democrats Rep. Jackie Speier and Sen. Dianne Feinstein have both attacked EPA for its move. Feinstein in a March 22 letter to Administrator Andrew Wheeler demanded an explanation for the switch, while Speier used a March 12 floor speech to attack the agency's decision and read the regional proposal that Trump officials overruled into the Congressional Record.

Feinstein's letter says the final determination "contradicts the extensive research and land surveying done by Region 9," including Obama-era findings that the property is regularly inundated by bay waters and would return to wetland conditions if the levees separating it from the San Francisco Bay were removed.

And Speier said in her speech, "The most recent EPA determination directly contradicts the findings of Region 9 experts, but it is completely in line with this administration's record of gutting environmental protections in the name of corporate interests."

Supreme Court Petition

Finally, a Montana man facing a conviction for criminal CWA violations over an unpermitted wetland fill is renewing his call for the Supreme Court to quickly return to the question of the water law's reach rather than waiting for the EPA-Corps rulemaking process to finish.

In a March 22 reply brief in the case *Joseph David Robertson v. United States*, the petitioner -- seeking to overturn a ruling by the U.S. Court of Appeals for the 9th Circuit that applied former Justice Anthony Kennedy's broad jurisdiction test to determine that the wetlands involved in his case were jurisdictional -- says the high court should decide the issue on its own rather than waiting for a rule that could be rewritten by the next administration.

"Even assuming the agencies adopt the new proposal, it will not resolve the uncertainties about the Act. Each new administration can tinker with (or wholesale revise) the definition of 'navigable waters,' because this Court has yet to clearly interpret the phrase. This administration may adopt one 'analytical framework,' but without a clear interpretation of the Act, the next one is perfectly free to adopt a completely different framework, and can be expected to," the brief says.

New York Post

(Opinion) Why Trump should call off the EPA's latest assault on NYC

<https://nypost.com/2019/03/25/why-trump-should-call-off-the-epas-latest-assault-on-nyc/>

Nicole Gelinas

Monday, March 25, 2019

Give Gotham credit: Whatever its other failings, the city understands that without high-quality drinking water, we have nothing. Now, President Trump's Environmental Protection Agency is forcing Big Apple residents to spend \$3 billion to "improve" and cover over a Yonkers reservoir.

This is classic overreach — massive taxpayer spending for minimal result — that Trump pledged to stop.

No matter who is mayor, New York jealously guards the reservoirs and pipes that bring us water. Today the city spends \$200 million a year employing 2,600 people to protect the water and sewer system, including guarding and monitoring upstate reservoirs.

Now, though, in a lawsuit filed this month, the US Department of Justice, with EPA support, calls our water system "a serious public-health problem." The supposed risk: Birds can poop in uncovered Hillview Reservoir in Yonkers, the last stop for a billion gallons of already chlorinated and ultraviolet-treated water as it flows into local pipes.

So we have to cover it, likely with concrete. Rather than fight, the city immediately settled, entering into a "consent decree."

Although it's tempting to imagine dark Trumpian forces punishing Democratic New York in this case, there is no evidence that the president knows about this lawsuit. Rather, it's the culmination of a painfully drawn-out process, spanning four administrations.

In 1996, the Clinton-era Congress amended the Safe Drinking Water Act. It took another decade, until 2006, for Bush-era regulators to apply the toughened law to uncovered reservoirs. Obama-era regulators dithered for years over whether the city would have to build the cap. All along, New York City tap water remained as safe and delicious as ever. But no matter, the feds kept pressing for the cap.

Trump was supposed to be different. Ten days into office, the 45th president signed an executive order to "reduce regulation and control regulatory costs" — without, of course, harming the environment. This lawsuit fails on three counts.

First, it isn't science-based. The EPA is upfront that this massive project is to "prevent" harm, not to remediate it. The city regularly tests the water, and the lawsuit doesn't proffer any evidence that anyone has gotten sick. The best the feds can do is to say that "if the Hillview water were to be re-contaminated" after previous chlorine treatment, "health would be threatened."

But consider: Former Mayor Mike Bloomberg was a stickler for public health, yet he spent 12 years in office not capping the reservoir. Would the man who wouldn't let us drink soda let us drink dirty water? Tellingly, even the environmental groups that often sue as third parties to enforce government statutes regarding air and water have left this case alone.

Then, too, New York has until 2049 to complete this project. You're drinking bird poop but have to wait 30 years for the feds to rescue you. That's an odd message to telegraph.

Second, it is an unfunded mandate that ignores local ideas. "You've got a great opportunity to put in place adaptive management" rather than apply a one-size-fits-all rule, Carter Strickland, Bloomberg's environmental protection chief, tells me. The city already manages wildlife at Hillview and can change its methods if and when testing results change.

Third, the feds ignore cost-benefit analysis. If EPA administrator Andrew Wheeler is concerned about local water supply, he ought to start with areas with far less oversight and power over their own supplies. New York's latest (unfounded) state health warning over water bacteria didn't apply to the Big Apple but to tiny upstate Franklin County. All over the country, in places with less media scrutiny than New York, people face real contamination.

Finally, one aspect of the suit is punitive. As part of the settlement, Gotham must pay a \$1 million federal fine, plus \$250,000 in state penalties. By comparison, the DOJ and EPA this month levied a \$616,000 civil penalty against ExxonMobil for clean-air violations arising from a 2013 fire at a Texas refinery that killed two employees.

Meanwhile, drink up, the water's fine — thanks to the resources and self-enlightened intentions of a wealthy city, not the feds.

The Detroit News

Whitmer orders DEQ to start developing PFAS water standards

<https://www.detroitnews.com/story/news/local/michigan/2019/03/26/whitmer-orders-deq-develop-pfas-drinking-water-standards/3276807002/>

Beth LeBlanc

Tuesday, March 26, 2019

Gov. Gretchen Whitmer has directed the Michigan Department of Environmental Quality to begin developing drinking water standards for per- and polyfluoralkyl substances instead of waiting on federal guidelines.

The Michigan PFAS Action Response Team will form a work group to review proposed and existing maximum contaminant levels throughout the country in order to develop an appropriate standard for Michigan by July 1. Under an accelerated schedule, stakeholders would be able to comment on the proposed standards by Oct. 1.

The "forever chemicals" known as PFAS are popularly used to create non-stick surfaces for products such as firefighting foam, Scotchgard, Teflon and food wrappers. They have been associated with health risks such as thyroid disease, increased cholesterol levels and kidney and testicular cancers.

Many have criticized the U.S. Environmental Protection Agency for its current 70 parts per trillion health advisory level, alleging that the level is too permissive. A state science advisory panel at the end of 2018 said there is some proof that 70 ppt. may still be detrimental to human health.

The EPA also has been slow to develop a new PFAS standard, indicating that it plans to set a mandatory new level for the "forever chemicals" by the end of the year.

The state "can no longer wait for the Trump administration to act" on the issue, Whitmer said.

"All Michiganders deserve to know that we are prioritizing their health and are working every day to protect the water that is coming out of their taps," the governor said in a statement.

Senate Majority Leader Mike Shirkey, R-Clarklake, said in a Tuesday statement that the Whitmer administration's proposed rules would be subject to normal legislative vetting and the rule-making process.

"Going forward, it is imperative that government rely on scientific research and facts to establish standards for drinking water," Shirkey said. "... The Senate has worked diligently to fund efforts to assess and mitigate the impact of PFAS, and my colleagues and I remain committed to pursuing science-based standards to protect the health and safety of our constituents."

The decision was applauded by federal and state lawmakers who saw the panel as an expansion of the state's continued effort to identify and address PFAS contamination in Michigan.

Whitmer's leadership is needed given the EPA's delays, said Congresswoman Debbie Dingell, D-Dearborn, who reiterated calls for the EPA to set a standard that would be applicable across the country.

"Setting a maximum contaminant level in Michigan this year will make sure all residents know about contamination in a timely manner and we are able to take action to clean it up," Dingell said.

The new standards should be ones that families can trust to be "sound, science-backed policies that hold up to rigorous scrutiny," said Rep. Sue Allor. The Wolverine Republican's district includes the former Wurtsmith Air Force Base in Oscoda, considered to be one of the hardest hit areas in the state for PFAS contamination.

The Michigan PFAS Action Response Team in 2018 tested nearly 1,600 drinking water systems and schools for PFAS contamination. The state got a hit for PFAS on nearly 10 percent of those tested, but only two breached the federal advisory level of 70 parts per trillion — the city of Parchment and an elementary school near Grand Haven.

A House bill that would have lowered the state's standard to 5 ppt. was introduced in December 2017, but has sat untouched. Michigan officials instead have urged the EPA to develop new drinking water levels to protect human health and make enforcement of those thresholds possible.

The stricter standard of 5 ppt. would mean that more than 20 Michigan communities would have suspect water supplies. One part per trillion is the equivalent of one teardrop in 20 Olympic-sized swimming pools.

The work of the task force will build on existing testing, which has equipped the state to respond quickly to new levels, the Michigan League of Conservation Voters said in a statement.

"This is not a partisan issue and we know legislative leaders are committed to standing together to address this threat to Michigan's way of life and our economy," the league's Deputy Director Bob Allison said.

Anthony D'Andrea
Intern, Office of Public Affairs
202-564-7137

Message

From: Tanner, Barbara [Tanner.Barbara@epa.gov]
Sent: 3/13/2019 4:27:10 PM
To: Faeth, Lisa [Faeth.Lisa@epa.gov]; Anderson, Steve [Anderson.Steve@epa.gov]; Askinazi, Valerie [Askinazi.Valerie@epa.gov]; Baptist, Erik [Baptist.Erik@epa.gov]; Barkas, Jessica [barkas.jessica@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Blair, Susanna [Blair.Susanna@epa.gov]; Buster, Pamela [Buster.Pamela@epa.gov]; Canavan, Sheila [Canavan.Sheila@epa.gov]; Caraballo, Mario [Caraballo.Mario@epa.gov]; Carroll, Megan [Carroll.Megan@epa.gov]; Cherepy, Andrea [Cherepy.Andrea@epa.gov]; Christian, Myrta [Christian.Myrta@epa.gov]; Corado, Ana [Corado.Ana@epa.gov]; Davies, Clive [Davies.Clive@epa.gov]; Dekleva, Lynn [dekleva.lynn@epa.gov]; Devito, Steve [Devito.Steve@epa.gov]; Doa, Maria [Doa.Maria@epa.gov]; Drewes, Scott [Drewes.Scott@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Edelstein, Rebecca [Edelstein.Rebecca@epa.gov]; Edmonds, Marc [Edmonds.Marc@epa.gov]; Elwood, Holly [Elwood.Holly@epa.gov]; Farquharson, Chenise [Farquharson.Chenise@epa.gov]; Fehrenbacher, Cathy [Fehrenbacher.Cathy@epa.gov]; Feustel, Ingrid [feustel.ingrid@epa.gov]; Frank, Donald [Frank.Donald@epa.gov]; Gibson, Hugh [Gibson.Hugh@epa.gov]; Gimlin, Peter [Gimlin.Peter@epa.gov]; Gorder, Chris [Gorder.Chris@epa.gov]; Gordon, Brittney [Gordon.Brittney@epa.gov]; Grant, Brian [Grant.Brian@epa.gov]; Gray, Shawna [Gray.Shawna@epa.gov]; Groeneveld, Thomas [Groeneveld.Thomas@epa.gov]; Guthrie, Christina [Guthrie.Christina@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Helfgott, Daniel [Helfgott.Daniel@epa.gov]; Henry, Tala [Henry.Tala@epa.gov]; Kapust, Edna [Kapust.Edna@epa.gov]; Kemme, Sara [kemme.sara@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Krasnic, Toni [krasnic.toni@epa.gov]; Lavoie, Emma [Lavoie.Emma@epa.gov]; Lee, Mari [Lee.Mari@epa.gov]; Lee, Virginia [Lee.Virginia@epa.gov]; Leopard, Matthew (OEI) [Leopard.Matthew@epa.gov]; Liva, Aakruti [Liva.Aakruti@epa.gov]; Lobar, Bryan [Lobar.Bryan@epa.gov]; Mclean, Kevin [Mclean.Kevin@epa.gov]; Menasche, Claudia [Menasche.Claudia@epa.gov]; Morris, Jeff [Morris.Jeff@epa.gov]; Moss, Kenneth [Moss.Kenneth@epa.gov]; Mottley, Tanya [Mottley.Tanya@epa.gov]; Moyer, Adam [moyer.adam@epa.gov]; Myers, Irina [Myers.Irina@epa.gov]; Myrick, Pamela [Myrick.Pamela@epa.gov]; Nazef, Laura [Nazef.Laura@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Owen, Elise [Owen.Elise@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Passe, Loraine [Passe.Loraine@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Pratt, Johnk [Pratt.Johnk@epa.gov]; Price, Michelle [Price.Michelle@epa.gov]; Reese, Recie [Reese.Recie@epa.gov]; Reisman, Larry [Reisman.Larry@epa.gov]; Rice, Cody [Rice.Cody@epa.gov]; Richardson, Vickie [Richardson.Vickie@epa.gov]; Ross, Philip [Ross.Philip@epa.gov]; Tanner, Barbara [Tanner.Barbara@epa.gov]; Sadowsky, Don [Sadowsky.Don@epa.gov]; Santacroce, Jeffrey [Santacroce.Jeffrey@epa.gov]; Saxton, Dion [Saxton.Dion@epa.gov]; Scarano, Louis [Scarano.Louis@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Schmit, Ryan [schmit.ryan@epa.gov]; Schweer, Greg [Schweer.Greg@epa.gov]; Scott Selken [spselken@up.com]; Scott, Elizabeth [Scott.Elizabeth@epa.gov]; Selby-Mohamadu, Yvette [Selby-Mohamadu.Yvette@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Sheehan, Eileen [Sheehan.Eileen@epa.gov]; Sherlock, Scott [Sherlock.Scott@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Sirmons, Chandler [Sirmons.Chandler@epa.gov]; Slotnick, Sue [Slotnick.Sue@epa.gov]; Smith, David G. [Smith.DavidG@epa.gov]; Smith-Seam, Rhoda [smith-seam.rhoda@epa.gov]; Stedeford, Todd [Stedeford.Todd@epa.gov]; Strauss, Linda [Strauss.Linda@epa.gov]; Symmes, Brian [Symmes.Brian@epa.gov]; Thompson, Tony [Thompson.Tony@epa.gov]; Tierney, Meghan [Tierney.Meghan@epa.gov]; Tillman, Thomas [Tillman.Thomas@epa.gov]; Tomassoni, Guy [Tomassoni.Guy@epa.gov]; Tran, Chi [Tran.Chi@epa.gov]; Turk, David [Turk.David@epa.gov]; Vendinello, Lynn [Vendinello.Lynn@epa.gov]; Wallace, Ryan [Wallace.Ryan@epa.gov]; Wheeler, Cindy [Wheeler.Cindy@epa.gov]; Widawsky, David [Widawsky.David@epa.gov]; Williams, Aresia [Williams.Aresia@epa.gov]; Williams, Bridget [Williams.Bridget@epa.gov]; Williamson, Tracy [Williamson.Tracy@epa.gov]; Wills, Jennifer [Wills.Jennifer@epa.gov]; Wise, Louise [Wise.Louise@epa.gov]; Wolf, Joel [Wolf.Joel@epa.gov]; Wright, Tracy [Wright.Tracy@epa.gov]; Yowell, John [yowell.john@epa.gov]
Subject: News Articles (For EPA Distribution Only)

BNA ARTICLES

[Roundup Cancer Claims Could Come Down to a Feather's Weight](#)

By Joel Rosenblatt

Posted March 12, 2019, 5:54 PM

A lawyer representing a man who claims Bayer AG's Roundup weedkiller caused his cancer urged jurors to imagine the scales of justice ever so slightly tilted in his favor, as if weighted by a feather, and said that would be enough to advance his trial to the next and final phase.

Some Chemicals to Replace Toxic Paint Stripper Also Have Risks

By Pat Rizzuto

Posted March 12, 2019, 3:57 PM

The market for paint and coating strippers made without a toxic solvent called methylene chloride is about to grow bigger as the EPA stands poised to restrict the solvent in at least some consumer products.

Interior Chief Pick Must Disclose Lobbying Ties, Watchdog Says

By Daniel Seiden

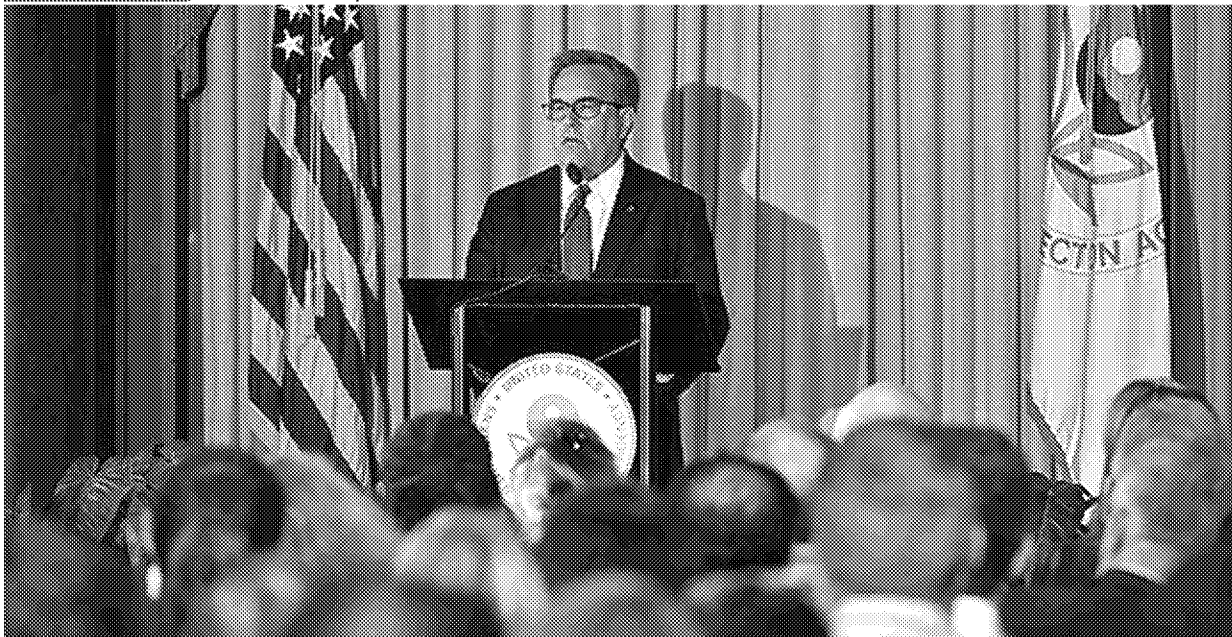
Posted March 12, 2019, 2:41 PM

The U.S. Department of the Interior must produce records of communications between David Bernhardt, President Trump's nominee to lead the department, and his former clients in the energy and agricultural industries, a March 12 complaint says.

GREENWIRE ARTICLES

Wheeler to address employees

Kevin Bogardus, E&E News reporter



EPA Administrator Andrew Wheeler, EPA

Published: Tuesday, March 12, 2019

EPA Administrator Andrew Wheeler will address agency employees this Thursday.

Wheeler invited EPA staff to attend in person or watch online his speech at 1 p.m. Thursday from the Map Room in headquarters, according to an internal email obtained by E&E News.

"I will address all EPA employees to celebrate the progress we have made and discuss how we can continue to improve the core functions of the Agency," he said in the email today.

Wheeler, who was confirmed by the Senate last month, said he is honored to serve as the head of EPA.

"I'm proud of what we have already accomplished together, including issuing the Agency's first-ever PFAS Action Plan, providing greater regulatory certainty to the American public, and making significant progress cleaning up contaminated sites around the country," he said in the email.

Wheeler also addressed employees this past July after he became EPA's acting administrator. Then deputy administrator, he had taken charge after Scott Pruitt resigned in the wake of ethics allegations.

In that speech, which reporters also attended, Wheeler praised career EPA employees and sought to minimize the stress of the leadership change at the agency (E&E News PM, July 11, 2018).

EPA spokesman John Konkus told E&E News that Wheeler's address Thursday will be for EPA employees only.

<https://www.eenews.net/greenwire/2019/03/12/stories/1060127071>

Watchdog amps up call for Wheeler lobbying probes

Corbin Hiar, E&E News reporter



EPA headquarters in Washington. EPA/Flickr

Published: Tuesday, March 12, 2019

This story was updated at 6:07 p.m. EDT.

A left-leaning watchdog group escalated its calls today for investigations of EPA chief Andrew Wheeler and his former lobbying firm.

In a follow-up complaint sent to the clerk of the House, the secretary of the Senate and — for the first time — the U.S. attorney for the District of Columbia, the Campaign for Accountability (CfA) requested investigations of potential

violations of lobbying laws and statements made to the federal government by Wheeler and Faegre Baker Daniels Consulting, where he worked prior to joining EPA.

At issue is lobbying Wheeler and Faegre did for Energy Fuels Resources Inc. regarding the hotly disputed boundaries of the Bears Ears National Monument. The company has investments in uranium mining claims inside the original boundaries of the Utah monument as well as an idled uranium mine and the nation's only operating uranium mill just outside of it.

The firm acknowledged just last year that Wheeler lobbied the Interior Department in July 2017 after CfA filed a complaint with congressional officials, citing reporting by *The Washington Post* (***E&E News PM***, Sept. 4, 2018). Sent a day before the House Natural Resources Committee is set to review the Trump administration's decision to shrink Bears Ears, CfA's latest complaint centers on more previously undisclosed lobbying by Wheeler, this time uncovered by ***Roll Call*** (***E&E Daily***, March 11).

The newspaper found Wheeler had first contacted Interior on behalf of Energy Fuels in March 2017, before the department had formally begun its monuments review.

That lobbying didn't appear in second-quarter 2017 lobbying disclosures Faegre initially filed in **July 2017** or amended filings in **August 2017** or **August 2018**.

"Faegre Baker Daniels Consulting and Andrew Wheeler committed serious violations of the Lobbying Disclosure Act by failing to disclose lobbying contacts they made with a covered executive branch official at the Interior Department in connection with their successful effort to change the boundaries of the Bears Ears National Monument for the commercial benefit of Energy Fuels Resources, Inc.," CfA Executive Director Daniel Stevens wrote in the complaint.

"Therefore, CfA respectfully requests that you initiate an investigation and take all appropriate action to ensure compliance with the Act ... and determine whether Faegre Baker and Mr. Wheeler intentionally submitted erroneous reports," said Stevens, who previously worked for former Sen. Tom Harkin (D-Iowa).

It's unclear whether the House clerk or Senate secretary have taken action on CfA's past complaints. Representatives of the officials didn't immediately respond to requests for comment.

Bill Miller, a spokesman for the U.S. attorney in D.C., said the office "has no comment on the request."

Lobbying violations are punishable by a fine of up to \$200,000 per violation or up to five years in prison, although few are ever prosecuted. There have been only nine known lobbying enforcement cases since 1995, none of which led to jail time, according to a November 2017 **blog post** by the law firm Holland & Knight LLP.

Running afoul of the False Statements Accountability Act, as CfA alleges Wheeler and Faegre have, can also lead to prison sentences of up to five years.

Meanwhile, EPA defended Wheeler's past work with the uranium company.

"Acting Administrator Wheeler has been very transparent concerning his work with Energy Fuels Resources, even discussing this during his confirmation process," spokesman Michael Abboud said in a statement. "He has consistently worked to comply with the Lobbying Disclosure Act; this particular matter involving Energy Fuels Resources and Bears Ears National Monument does not impact his work at EPA as this is not an agency-related issue."

Wheeler's former firm, however, suggested it may have to update its second-quarter 2017 filings for a third time.

"Faegre Baker Daniels is conducting a detailed records review and will amend [Lobbying Disclosure Act] reports as appropriate," spokeswoman Marylee Moore said in an email.

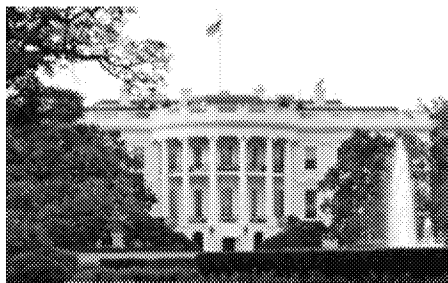
<https://www.eenews.net/greenwire/2019/03/12/stories/1060127073>

CHEMICAL WATCH ARTICLES

Trump proposes deep cuts to EPA's 2020 funding

Budget proposal has 'no chance at becoming reality', congressman says

12 March 2019 / TSCA, United States



US President Donald Trump is looking to cut the EPA budget by 31%, according to his recently released budget proposal for fiscal year 2020.

His request for \$6.1bn in agency funding is nearly \$3bn less than the enacted FY 2019 level. This is in line with past requests, which have proposed slashing the EPA budget by 31% and 24% for FY 2018 and FY 2019, respectively.

The EPA's current budget of \$8.8bn – agreed in a recent deal which averted a second government shutdown – includes funding for activities like TSCA administration and chemical safety and sustainability research.

Mr Trump's budget proposal for FY 2020, which begins October 1 of this year, highlights toxic chemicals protections as a budget priority, noting that the coming year will see work "accelerate as the agency reaches statutory deadlines to complete the first set of risk evaluations for existing chemicals and begins the next phase of work."

The proposal also allots \$66.4m for chemical risk review and reduction, to supplement TSCA fees paid by manufacturers and processors.

In a press release, recently confirmed Administrator Andrew Wheeler called the request a "common sense budget proposal" that "would support the agency as it continues to work with states, tribes and local governments to protect human health and the environment".

But the NGO Environmental Working Group (EWG) has declared it a "disaster".

"The administration's budget proposal reflects the president's top priority: Appease his hard-right base and the fossil fuel and chemical industries that have infiltrated the top positions at the EPA," said EWG president Ken Cook in a statement.

Statement of priorities

The president's budget is more a statement of priorities than a funding package. Congress holds the government's purse strings, and has rejected Mr Trump's attempts to hamstring the agency's funding in the past.

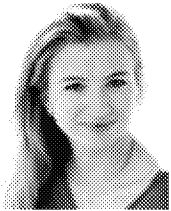
Indeed, House Energy & Commerce Chairman Frank Pallone (D-New Jersey) was quick to issue a statement dismissing the proposal as "a sham [that] has absolutely no chance at ever becoming a reality."

"Congress simply will not support a proposal that makes drastic cuts to federal agencies," he added.

But talk of significant cuts can still send jitters through the system.

A recent Government Accountability Office (GAO) report, for example, highlighted that Integrated Risk Information System (IRIS) officials have said "that proposed budget cuts have caused them concern about whether they will have sufficient resources to expand assessment work in the future."

The president's budget overview does not explicitly reference IRIS, an independent risk assessment programme which falls under the EPA's purview. But past years have seen calls for significant cuts to the agency's human health risk assessment area, of which IRIS's budget makes up approximately half.



Lisa Martine Jenkins
Americas reporter

Related Articles

- [Trump budget proposal would cut EPA funding by a third](#)
- [Trump proposes slashing EPA budget again](#)
- [US Congress passes EPA budget for 2019](#)
- [Temporary end to US shutdown leaves uncertainty at EPA](#)
- [Shutdown-related delays could compromise TSCA statutory deadlines](#)
- [US Congress likely to reject EPA cuts again](#)
- [Congress rejects Trump plan to slash EPA budget](#)
- [Government watchdog says EPA leadership has slowed IRIS assessments](#)

•

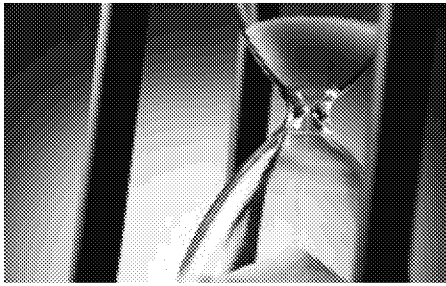
Further Information:

•

- [Trump 2020 budget](#)
- [GAO report](#)
- [Pallone statement](#)
- [EWG statement](#)

EPA 'not planning' to extend TSCA risk evaluation deadline

No current intention of calling for six-month extension



The US EPA plans to meet the December deadline for finalising its first ten risk evaluations under TSCA, according to recent remarks from chemicals office head Alexandra Dunn.

Passage of the Lautenberg Act in 2016 set in motion a series of deadlines for the EPA to select and complete risk evaluations on ten priority substances, with final assessments due by 19 December.

The statute does allow for a six-month extension, if needed. But speaking at the American Chemistry Council's (ACC) GlobalChem conference in Washington, DC, last week, Ms Dunn said the agency "at this moment, [is] not planning on using it."

"We intend to meet that date," said the Office of Chemical Safety and Pollution Prevention assistant administrator.

Ms Dunn indicated that there will not necessarily be ten separate peer reviews convening, because the agency can group together similar chemicals. August will probably see the culmination of the peer review process to allow the Office of Management and Budget (OMB) 90 days to complete its interagency review before the evaluations are finalised, she added.

To date, only one of the ten draft risk evaluations – for pigment violet 29 (PV29) – has been released. But its peer review was put on hold due to the US's longest government shutdown, which left the EPA shuttered for more than a month. A catch-up date has not yet been set.

'We have got to move,' Alexandra Dunn, chemicals office head, EPA

Additionally, EPA Administrator Andrew Wheeler pledged to Congress that the agency would stagger the release of the draft evaluations and allow a minimum of 60-day comment periods on each to "maximise the opportunity for review".

"We are planning to move deliberately, thoughtfully, intensively through this," Ms Dunn said. But it is going to be a challenge, she added: "We have got to move."

Additional evaluations loom

Beyond these first ten risk evaluations, Ms Dunn indicated that additional ones may be in the works for substances nominated by industry.

The EPA "can do additional evaluations based on manufacturer requests, and we have some of those from the American Chemistry Council and I believe we have one other," she said in her remarks.

The TSCA risk evaluation framework rule anticipates nearly 200 days from receipt of a manufacturer request to beginning an evaluation: this includes a public notification step and comment period process before the EPA makes a determination to grant or deny it.

Therefore, if accepted, evaluations of these nominated substances would probably come alongside the next 20 substances that the EPA will begin evaluating.

Ms Dunn confirmed that the candidate list for these 20 'high priority' substances is set to be released later this month.

She said the substances have been selected from the 2014 TSCA workplan, "so there should not be a surprise about any of them".

The statutory deadline for the EPA to finalise its next set of high priority chemicals and begin assessments on them is 22 December.



Kelly Franklin
North America editor

Related Articles

- [EPA names first ten chemicals for new TSCA evaluations](#)
- [EPA provides 'low hazard' preliminary TSCA conclusion on PV29](#)
- [US government shutdown could delay TSCA risk evaluation](#)
- [Shutdown-related delays could compromise TSCA statutory deadlines](#)
- [EPA promises changes to TSCA new chemicals transparency, CBI](#)
- [US NGOs press for extended consultations on TSCA risk evaluations](#)
- [US EPA issues final TSCA framework rules](#)
-
- **Further Information:**
-
- [EPA TSCA risk evaluations](#)

Brexit prompts UK's CBA to sell regulatory compliance business

13 March 2019 / Biocides, Brexit, Europe, REACH, UK

The UK's Chemical Business Association (CBA) has sold its specialist regulatory compliance company Regulatory Facilitation Company (ReFaC) to Germany-based consultant and services provider CSB.

The CBA represents the UK chemical supply chain, with distributors, traders, logistics and transport companies among its members.

After the referendum outcome signalling the UK's future withdrawal from the EU, CBA developed a contingency plan to relocate ReFaC to another member state to guarantee continuity of the company's services.

ReFaC's clients, in the UK and elsewhere, can use CSB's REACH and only representative (OR) services to ensure compliance with the EU chemical regulatory framework. CSB also provides safety data sheet authoring, as well services under REACH, GHS and biocides Regulations.

The company has long criticised the UK government's handling of Brexit for failing to provide certainty in the chemicals industry, and attacked its plans for mirroring REACH legislation.

ReFaC was formed in 2006 to provide UK companies with a "low-cost method" of meeting their compliance obligations under the impending REACH legislation, the CBA said. It was formed by the industry for industry, with CBA member companies as its original shareholders, the association added. The company traded until 2015 when CBA acquired all of its share capital.

Lars Dobbertin, CSB general manager, said the company will continue to deliver ReFaC's compliance services from its UK office to its existing clients selling into EU markets.

"We are now also in an excellent position to offer clients the full regulatory support for the UK after Brexit. Our plan is to grow the business by helping companies comply with both UK and EU chemical regulations through an enhanced service portfolio."

On 12 March Echa opened its REACH IT window to enable UK companies to make changes and transfer their REACH registrations to EU-based entities. If an only representative (OR) is not appointed, the EU27/EEA importers will have to submit their own registrations. The window will close on 29 March – the day the UK is due to leave the EU.

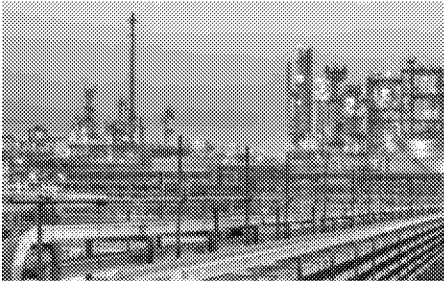
On 12 March Prime Minister Theresa May's EU withdrawal deal was defeated for a second time. MPs will today decide if they want to block a no-deal scenario. If this passes, they will reconvene tomorrow to vote on extending Article 50 and thereby delay the country's exit from the trade bloc.

Related Articles

- [UK chemicals industry 'pragmatic' about impact of Brexit vote](#)
- [CBA survey 'confirms' UK REACH data fears](#)
- [Echa opens Brexit REACH IT window](#)
- [Parliament Brexit deal rejection 'prolongs uncertainty' – industry](#)
- [Industry welcomes MPs backing of amendment rejecting no-deal Brexit](#)
-
- **Further Information:**
-
- [CBA press release](#)

Global goal for chemicals will not be achieved, says UN report

Despite 'significant progress' GCO II summary finds major implementation gaps



The global goal to minimise adverse impacts of chemicals and waste will not be achieved by 2020, according to a major UN report.

The 2020 goal was set out in 2006 under the UN's global non-binding chemicals programme, the Strategic Approach to International Chemicals Management (Saicm).

But a summary version of the second Global Chemicals Outlook (GCO II) report says, despite international agreement, reached at high-level UN conferences, and significant action already taken, "scientists continue to express concerns regarding the lack of progress" made.

Despite international agreement, reached at high-level UN conferences, and significant action already taken, 'scientists continue to express concerns regarding the lack of progress' made

The 68-page summary report, which follows on from an earlier policy makers report, was published yesterday at the Unea-4 conference in Nairobi. It comes just weeks before the full report is due to be released during the Saicm Open Ended Working Group (OEWG) meeting in Montevideo next month. This is being held to establish whether the programme should continue beyond its 2020 mandate, or be replaced with an alternative framework.

The GCO II summary – which sets out 10 key findings - finds that despite "significant progress" made, major implementation gaps remain. In particular, developing countries, and economies in transition, still lack basic chemicals and waste management systems.

It highlights that the Globally Harmonised System (GHS) for classification and labelling has not been implemented in more than 120 countries, mostly developing nations and economies in transition.

Many, it says, still lack pollutant release transfer registers (PRTRs), poison centres and capacities for hazard and risk assessment and risk management.

Gaps remain in managing industrial chemicals and consumer products, with regulations on lead in paint being a "revealing indicator". As of September 2018, only 37% of countries had confirmed they have legally binding controls on lead in paint. And, even if regulations on specific chemicals are in place, implementation and enforcement may pose challenges, it says.

Progress remains insufficient, the summary says, and there is an "urgent need to take concerted action to develop basic chemicals management systems in all countries".

Chemical production and consumption is shifting to emerging economies, in particular China. The Asia-Pacific region is projected to account for more than two-thirds of global sales by 2030 and cross-border e-commerce is growing 25% annually.

With such growth expected, the report says industry's involvement in global chemicals management has "not been sufficient".

"While industry is involved through programmes such as [the international Council of Chemical Associations'] Responsible Care programme, universal coverage is yet to be achieved," it says.

However, speaking on behalf of the ICCA, vice president of regulatory and technical affairs at the American Chemistry Council (ACC), Mike Walls, told Chemical Watch recently that he does not agree with this conclusion on the 2020 goal, saying that "we've made significant progress".

"A more appropriate approach to the discussion is considering what we have achieved and how we can continue to build on successes as opposed to bemoaning the fact that we haven't completely achieved the 2020 goal as articulated in the Rio declaration," he added.

The ICCA is pushing for a "reinvigorated" Saicm programme.

Saicm

The 2018 independent evaluation of Saicm found that it is "unique in its ambition as an inclusive multi-stakeholder, multi-sector voluntary policy framework".

The evaluation also found that the programme creates a "collaborative space for raising awareness, increasing knowledge and reducing risks".

However, it points out weaknesses, such as:

- insufficient sectoral engagement;
- the capacity constraints of national focal points;
- lack of tools to measure progress; and
- limited financing of activities.



Leigh Stringer
Global Business Editor

Related Articles

- [Global trends are major cause for concern, says UN chemicals report](#)
- [Global Chemicals Outlook II: key findings](#)
- [ICCA seeks 'reinvigorated' post-2020 global chemicals framework](#)

-
- **Further Information:**
-
- [Summary report](#)

Member states begin checks on hazardous chemicals in imported products

13 March 2019 / CLP Regulation, Enforcement, Europe, REACH, Substances of concern

National enforcement authorities (NEAs) in 16 EU member states have started inspections on imported goods to check for the presence of substances of concern.

Coordinated by the Echa Enforcement Forum, the pilot [project](#) targets REACH and CLP obligations for the products and is performed in cooperation with customs authorities. It began in March and will run until the autumn.

Inspectors and customs teams will check whether imported products comply with certain restrictions under REACH regarding hazardous chemicals, such as:

- cadmium;
- nickel; or
- lead.

They are also verifying that chemical products are labelled with the required safety information.

Where products are found to be non-compliant, the import will be stopped and any future imports will not be allowed to enter the EU market. "The tighter collaboration between inspectors and customs authorities will also further enhance the protection of EU citizens from hazardous substances," Echa said.

The final report for the pilot project is expected around mid-2020.

At the beginning of the year Echa's Enforcement Forum released its work [programme](#) until 2023. This identified imports of articles containing substances of concern and cooperation with customs as a priority area.

The release came six months after the EU Commissioner for environment, maritime affairs and fisheries urged Echa to [assess the need](#) for a restriction of SVHCs in imported articles earlier in the regulatory process.

Related Articles

- [EU enforcement project to check REACH registrations in 2019](#)
- [Imported articles key part of EU enforcement priority plan](#)
- [EU Commissioners urge greater action on SVHCs in imported articles](#)
-
- **Further Information:**
-
- [Echa press release](#)

© 2019. Reprinted and distributed by kind permission of Chemical Watch

OTHER ARTICLES

UN **chemicals** report: more ambitious action urgently needed

Chemical Watch

Global supply chains, and the trade of chemicals and products, are ... Consumer demand, as well as green and **sustainable chemistry** education and ...

Salon owner has a passion for 'green' beauty on the Guilford Green

Shoreline Times

A. For example, with our color treatments, it's **green chemistry** color so there's zero ammonia. There's no odor even with our lighteners. Customers ...

Bill gives health chief more clout in regulating children's products for toxicity

vtdigger.org

The Senate Committee on Health and Welfare has approved a bill that would update the state's **toxic substances** regulations. The legislation, S.55, ...

EPA, Chemical Industry Version: Killing Workers Is Job One

Natural Resources Defense Council

When it comes to protecting workers, as well as the general public, from exposure to dangerous and even deadly **toxic chemicals**, the Trump EPA has ...

Message

From: Tanner, Barbara [Tanner.Barbara@epa.gov]
Sent: 3/26/2019 4:09:48 PM
To: Faeth, Lisa [Faeth.Lisa@epa.gov]; Anderson, Steve [Anderson.Steve@epa.gov]; Askinazi, Valerie [Askinazi.Valerie@epa.gov]; Baptist, Erik [Baptist.Erik@epa.gov]; Barkas, Jessica [barkas.jessica@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Blair, Susanna [Blair.Susanna@epa.gov]; Buster, Pamela [Buster.Pamela@epa.gov]; Canavan, Sheila [Canavan.Sheila@epa.gov]; Caraballo, Mario [Caraballo.Mario@epa.gov]; Carroll, Megan [Carroll.Megan@epa.gov]; Cherepy, Andrea [Cherepy.Andrea@epa.gov]; Christian, Myrta [Christian.Myrta@epa.gov]; Corado, Ana [Corado.Ana@epa.gov]; Davies, Clive [Davies.Clive@epa.gov]; Dekleva, Lynn [dekleva.lynn@epa.gov]; Devito, Steve [Devito.Steve@epa.gov]; Doa, Maria [Doa.Maria@epa.gov]; Drewes, Scott [Drewes.Scott@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Edelstein, Rebecca [Edelstein.Rebecca@epa.gov]; Edmonds, Marc [Edmonds.Marc@epa.gov]; Elwood, Holly [Elwood.Holly@epa.gov]; Farquharson, Chenise [Farquharson.Chenise@epa.gov]; Fehrenbacher, Cathy [Fehrenbacher.Cathy@epa.gov]; Feustel, Ingrid [feustel.ingrid@epa.gov]; Frank, Donald [Frank.Donald@epa.gov]; Gibson, Hugh [Gibson.Hugh@epa.gov]; Gimlin, Peter [Gimlin.Peter@epa.gov]; Gorder, Chris [Gorder.Chris@epa.gov]; Gordon, Brittney [Gordon.Brittney@epa.gov]; Grant, Brian [Grant.Brian@epa.gov]; Gray, Shawna [Gray.Shawna@epa.gov]; Groeneveld, Thomas [Groeneveld.Thomas@epa.gov]; Guthrie, Christina [Guthrie.Christina@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Helfgott, Daniel [Helfgott.Daniel@epa.gov]; Henry, Tala [Henry.Tala@epa.gov]; Kapust, Edna [Kapust.Edna@epa.gov]; Kemme, Sara [kemme.sara@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Krasnic, Toni [krasnic.toni@epa.gov]; Lavoie, Emma [Lavoie.Emma@epa.gov]; Lee, Mari [Lee.Mari@epa.gov]; Lee, Virginia [Lee.Virginia@epa.gov]; Leopard, Matthew (OEI) [Leopard.Matthew@epa.gov]; Liva, Aakruti [Liva.Aakruti@epa.gov]; Lobar, Bryan [Lobar.Bryan@epa.gov]; Mclean, Kevin [Mclean.Kevin@epa.gov]; Menasche, Claudia [Menasche.Claudia@epa.gov]; Morris, Jeff [Morris.Jeff@epa.gov]; Moss, Kenneth [Moss.Kenneth@epa.gov]; Mottley, Tanya [Mottley.Tanya@epa.gov]; Moyer, Adam [moyer.adam@epa.gov]; Myers, Irina [Myers.Irina@epa.gov]; Myrick, Pamela [Myrick.Pamela@epa.gov]; Nazef, Laura [Nazef.Laura@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Owen, Elise [Owen.Elise@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Passe, Loraine [Passe.Loraine@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Pratt, Johnk [Pratt.Johnk@epa.gov]; Price, Michelle [Price.Michelle@epa.gov]; Reese, Recie [Reese.Recie@epa.gov]; Reisman, Larry [Reisman.Larry@epa.gov]; Rice, Cody [Rice.Cody@epa.gov]; Richardson, Vickie [Richardson.Vickie@epa.gov]; Ross, Philip [Ross.Philip@epa.gov]; Sadowsky, Don [Sadowsky.Don@epa.gov]; Santacroce, Jeffrey [Santacroce.Jeffrey@epa.gov]; Saxton, Dion [Saxton.Dion@epa.gov]; Scarano, Louis [Scarano.Louis@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Schmit, Ryan [schmit.ryan@epa.gov]; Schweer, Greg [Schweer.Greg@epa.gov]; Scott Selken [spselken@up.com]; Scott, Elizabeth [Scott.Elizabeth@epa.gov]; Selby-Mohamadu, Yvette [Selby-Mohamadu.Yvette@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Sheehan, Eileen [Sheehan.Eileen@epa.gov]; Sherlock, Scott [Sherlock.Scott@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Sirmons, Chandler [Sirmons.Chandler@epa.gov]; Slotnick, Sue [Slotnick.Sue@epa.gov]; Smith, David G. [Smith.DavidG@epa.gov]; Smith-Seam, Rhoda [smith-seam.rhoda@epa.gov]; Stedeford, Todd [Stedeford.Todd@epa.gov]; Strauss, Linda [Strauss.Linda@epa.gov]; Symmes, Brian [Symmes.Brian@epa.gov]; Thompson, Tony [Thompson.Tony@epa.gov]; Tierney, Meghan [Tierney.Meghan@epa.gov]; Tillman, Thomas [Tillman.Thomas@epa.gov]; Tomassoni, Guy [Tomassoni.Guy@epa.gov]; Tran, Chi [Tran.Chi@epa.gov]; Turk, David [Turk.David@epa.gov]; Vendinello, Lynn [Vendinello.Lynn@epa.gov]; Wallace, Ryan [Wallace.Ryan@epa.gov]; Wheeler, Cindy [Wheeler.Cindy@epa.gov]; Widawsky, David [Widawsky.David@epa.gov]; Williams, Aresia [Williams.Aresia@epa.gov]; Williams, Bridget [Williams.Bridget@epa.gov]; Williamson, Tracy [Williamson.Tracy@epa.gov]; Wills, Jennifer [Wills.Jennifer@epa.gov]; Wise, Louise [Wise.Louise@epa.gov]; Wolf, Joel [Wolf.Joel@epa.gov]; Wright, Tracy [Wright.Tracy@epa.gov]; Yowell, John [yowell.john@epa.gov]; Tanner, Barbara [Tanner.Barbara@epa.gov]
Subject: News Articles (For EPA Distribution Only)

BNA.COM ARTICLES

[Paint Stripper Makers Examine Substitutes for Deadly Solvent](#)

ED_002923A_00002108-00001

By Pat Rizzuto

Posted March 26, 2019, 7:15 AM

Lowe's, Home Depot, Walmart, and other retailers may not be clear what the safest paint strippers are to sell following their decisions to drop methylene chloride-based coating removers.

California Verdict on Weedkiller Prompts Vietnam Import Ban

By Lien Hoang

Posted March 26, 2019, 7:49 AM

A California verdict linking the weedkiller Roundup to cancer has ricocheted 14 time zones away in Vietnam, which responded by banning imports of the chemical.

INSIDEEPA.COM ARTICLES

EPA Seeks More Funding For TSCA Program As Activities Increase In 2020

The Trump administration is once again proposing to increase the budget for EPA's toxics office, a rare bump up for an EPA program, as it works to implement the bipartisan reform of the Toxic Substances Control Act (TSCA), an effort that is a priority to industry and agency leaders as they gain insight on the resources needed to operate the new program.

Duke agrees to fine over EPA-funded research allegations

Duke University has agreed to pay \$112.5 million and overhaul oversight of its research activities under a settlement announced today that resolves allegations the university submitted applications and progress reports containing "falsified research" on projects funded by EPA and the National Institutes of Health.

GREENWIRE ARTICLES

Head of 'Lean' office departs

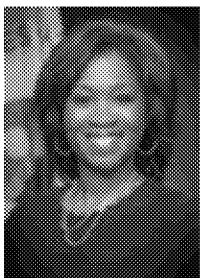
Kevin Bogardus, E&E News reporter

Published: Monday, March 25, 2019

Serena McIlwain, a senior EPA official at the forefront of the push to streamline operations, is leaving the agency.

McIlwain, director of EPA's Office of Continuous Improvement, is leaving federal service March 30, according to her **resignation letter** obtained by E&E News.

She will transition into a political appointee role at an unnamed state government starting April 1, she said in the letter, addressed to acting Deputy Administrator Henry Darwin.



Serena McIlwain. EPA

"Thank you for allowing me to be a part of your amazing team and making your vision of ELMS a reality for EPA," said McIlwain, who is also EPA's performance improvement officer.

ELMS stands for "EPA Lean Management System," a top priority for the agency under the Trump administration that has set up metrics to track work targets and established measures to speed up agency processes as well as held training for staff.

EPA's goal is to have the Lean system, designed to make work quicker and more efficient, deployed in 80 percent of the agency by September 2020.

Darwin, also EPA's chief of operations, joined the agency in 2017 to help lead the Lean effort. As a senior Arizona official, he helped implement the system in several agencies there.

In May last year, former EPA Administrator Scott Pruitt announced the creation of the Office of Continuous Improvement. The office, housed in the Office of the Administrator, coordinates agencywide implementation of the Lean system (***E&E News PM***, May 14, 2018).

McIlwain joined EPA in 2014 and had worked in its Region 9 branch as assistant regional administrator and director of its Environmental Management Division.

Along with EPA, McIlwain has worked at several agencies, including the Department of Energy and the Architect of the Capitol.

She has master's degrees in public administration from George Mason University and in general administration from Central Michigan University.

<https://www.eenews.net/greenwire/2019/03/25/stories/1060128169>

Bill would block local fees, bans on plastic bags

Published: Monday, March 25, 2019

Oklahoma lawmakers are considering legislation to prevent cities and towns from imposing a fee on single-use plastic and paper bags, a measure that officials in one Oklahoma community say encroaches on their search for an innovative way to protect the environment from the problems of carelessly discarded bags.

Oklahoma is one of at least five states where lawmakers are considering pre-empting local governments from taxing or banning plastic bags that are used to carry everything from groceries to clothing and cosmetics, according to the National Conference of State Legislatures' website. Eleven other states, including Texas, Arizona and Florida, already have pre-emptions laws in place, the NCSL said.

The Oklahoma measure was proposed as leaders in Norman, about 17 miles south of Oklahoma City, consider imposing a 5-cent fee on single-use plastic and paper bags as city leaders explore ways to limit a leading source of litter and pollution.

Mayor-elect Breea Clark, a member of the Norman City Council, said that the city leads the state in participation in curbside recycling but that recyclers statewide are refusing to accept single-use plastic bags because they get stuck in the recycling equipment.

"Now that we can't recycle them, we have to throw them away. They're everywhere," Clark said. She said many wind up in nearby Lake Thunderbird, the city's main source of drinking water.

Clark said imposing a fee on single-use bags offers "an effective way to change consumer habits." In Boulder, Colo., where a 10-cent fee was imposed on plastic bags in 2012, city officials say plastic bag usage declined 70 percent.

But allowing hundreds of Oklahoma cities and towns to adopt their own guidelines would create a hodgepodge of rules that would make buying food and beverages more costly and inconvenient and create compliance problems for manufacturers and retailers, said state Sen. James Leewright (R), the pre-emption bill's author.

"We've already started to see some municipalities do some taxation of different plastics," Leewright said. "I think that's very regressive on raising food costs." — *Tim Talley, Associated Press*

<https://www.eenews.net/greenwire/2019/03/25/stories/1060128139>

CHEMICAL WATCH ARTICLES

US EPA publishes REACH studies underlying TSCA PV29 evaluation

Data owners 'revised their confidentiality claims', says agency

25 March 2019 / Confidentiality & right-to-know, TSCA, United States



The US EPA has released additional information on two dozen studies used to underpin a TSCA risk evaluation that had previously been withheld as confidential.

The protected status of the 24 health and safety studies – which the EPA used in developing the November 2018 draft evaluation for pigment violet 29 – has been the subject of controversy.

Consumer advocacy groups have argued that such data is not eligible for protection as confidential business information (CBI) and filed a public records request to access it. At the same time industry defended the commercial value of the studies, particularly for substances registered under the EU's REACH Regulation. Democrats in Congress, meanwhile, have continued to press for public release of the information.

In its announcement, the EPA says the data-owning companies have "revised their confidentiality claims, dropping most of them". This has resulted in the agency publishing the full studies or expanded summaries of them – including for 20 submitted to Echa when PV29 was registered in Europe – where only robust summaries had been available previously.

The EPA has reviewed the remaining CBI claims and determined that the information is entitled to protection. That information, it added, has been redacted from the publicly released studies.

In announcing the release of the data, EPA Office of Chemical Safety and Pollution Prevention (OCSPP) Assistant Administrator Alexandra Dunn said the agency is "committed to being transparent with information on chemicals, as we work to develop risk evaluations under TSCA".

Ms Dunn made similar comments when speaking at the American Chemistry Council's GlobalChem conference in Washington, DC earlier this month, telling attendees that the agency has learned from the responses it received on PV29 and will be more careful around CBI protections.

"We are committed to the transparency around this and the other nine chemicals" being evaluated under the reformed TSCA, she said at the time.

The release of the studies has not affected the 'no unreasonable risk' determination laid out in the draft risk evaluation.

The EPA said, however, that it will be reopening the comment period on the assessment to allow for feedback on the new information.

The peer review panel for PV29 – which was cancelled during the partial government shutdown earlier this year – is in the process of being rescheduled.

Clarification: This article was updated on 25 March to reflect that the EPA has not released the full studies in all cases.



Kelly Franklin
North America editor

Related Articles

- First TSCA draft risk evaluation finds no unreasonable risk
- NGOs demand release of REACH studies submitted as confidential under TSCA
- Democrats call for release of CBI data underlying TSCA evaluation
- EPA takes closer look at confidentiality of safety studies under TSCA
- EPA provides 'low hazard' preliminary TSCA conclusion on PV29
- US shutdown delays science committee's review of PV29
- US government shutdown could delay TSCA risk evaluation

•

• Further Information:

•

- EPA release
- PV29 studies
- PV29 docket

Kentucky PFAS firefighting foam restrictions become law

25 March 2019 / PFCs, US states

A Kentucky measure restricting the use of firefighting foams containing intentionally added per- and polyfluoroalkyl (PFAS) substances has been signed into law.

Governor Matt Bevin approved the bill (SB 104) on 22 March.

It will ban the use of the products for training or testing purposes, with some exceptions from 15 July 2020. Their continued use in emergency situations will not be affected.

Related Articles

- [Kentucky legislature sends PFAS firefighting foam restriction to governor](#)
-
- **Further Information:**
-
- [Signed bill](#)
- [Enacted legislation tracker](#)

EU issues RoHS exemption request studies for lead, DEHP and mercury

25 March 2019 / Alternatives assessment & substitution, Europe, Metals, Phthalates, RoHS

The European Commission has published two studies on requests for certain substances to be exempted from restrictions under the RoHS Directive.

One study is on eight requests for exemptions for lead and DEHP, and the other details one exemption request for mercury and two for lead.

The studies contain a number of non-legally binding recommendations and are available as free downloads on the European Commission's website. They are called:

- Study to assess eight (8) exemption requests in Annexes III and IV to Directive 2011/65/EU 'Renewal of exemptions III.41, IV.37, IV.41, and requests for new exemptions for lead and DEHP in certain NRMM engines applications, lead in solder and hexavalent chromium to be used in mass spectrometers, lead in certain thermal cutoff fuses and lead in solders of certain applications used to identify radiation'; and
- Study to assess three exemption requests (one for mercury and two for lead)

•

Related Articles

- [Commission publishes RoHS Directive amendments for lead, cadmium](#)
- [European Environment Agency: mercury still a 'significant risk'](#)
- [Commission requests Echa OEL recommendations for lead, diisocyanates](#)
-
- **Further Information:**
-
- [Study to assess eight exemption requests](#)
- [Study to assess three exemption requests](#)

Illinois Senate clears bill banning animal testing for cosmetics

26 March 2019 / Alternative approaches to testing, Personal care, US states

Illinois' state Senate has passed a bill that would ban the import or sale of any cosmetic product developed using tests on animals from 2020. After unanimous approval of SB 0241, it arrived in the state's House of Representatives for consideration on 21 March.

The bill – which would amend the state's Food, Drug, and Cosmetic Act – has certain exceptions to the prohibition, such as where animal tests are required by federal or state regulations. These are largely in line with a California bill which, when passed last autumn, became the toughest cruelty-free law on the books in the US.

Illinois' action on animal testing comes as other state and federal authorities begin to push for alternatives. At least eight other states are considering animal testing restrictions this legislative session.

And last month the US Congress used the federal budget to direct the EPA to promote and use alternatives to "unnecessary" animal testing.

Meanwhile, earlier this month, Australia passed a country-wide ban on the practice.

Related Articles

- [California cosmetics animal testing bill becomes law](#)
- [Cosmetics without animal testing](#)
- [US EPA budget contains wins for animal testing alternatives](#)
- [Australian NGOs celebrate 'huge win' on animal testing ban](#)
-
- **Further Information:**
-
- [SB 0241 text](#)
- [Bill status](#)

Nearly 3,000 UK registrations initiated for EU27 transfer – Echa

Brexit window to stay open beyond 29 March

26 March 2019 / Brexit, Europe, REACH, UK



UK-based companies have initiated the transfer of nearly 3,000 REACH registrations to EU27 entities since the beginning of the year, Echa has said.

Such transfers are necessary for UK companies to continue to have access to the single market in a no-deal Brexit scenario. Since Echa opened its Brexit window on 12 March, nearly 2,000 registrations have been transferred, the agency said.

The IT window, which allows companies to make the changes before Brexit date, will now stay open beyond 29 March "subject to further developments", it said.

The UK was due to leave the EU on that date. But an extension to Brexit granted by member states last week means Britain will now leave on 22 May if Parliament approves Prime Minister Theresa May's withdrawal deal.

If not, Britain will have until 12 April to offer a new plan or decide to leave without agreement.

MPs are expected to make a series of indicative votes this week to pave the next steps for Brexit, with all options, including Ms May's deal, a no-deal exit, a second referendum on the deal, still on the table.

Echa said it would amend its advice "whenever there are further developments". For now, it added: "Our current advice and instructions for companies are still valid".

More expected

Earlier this month, the UK's Chemical Industries Association (CIA) said it expects a significant number of transfers because the number of substances registered by UK companies only is higher than originally thought.

Meanwhile, Cefic and the CIA have advised registrants to use the suspensive condition clause in contractual arrangements when appointing ORs.

If an only representative (OR) is not appointed, the EU27/EEA importers will have to submit their own registrations.

Last month, Echa sent messages to all UK-based registrants – about 1,800 companies – on how to prepare for Brexit. At the same time it published a list of the substances that are only registered by UK companies, which numbered 1,181.

The agency has also published comprehensive instructions regarding chemicals in view of the UK's withdrawal.



Clelia Oziel

Europe correspondent

Related Articles

- Echa opens Brexit REACH IT window
- Echa releases comprehensive Brexit chemicals instructions

-

- **Further Information:**

-

- Echa press release

© 2019. Reprinted and distributed by kind permission of Chemical Watch

OTHER ARTICLES

What toxic chemicals lurk in YOUR bathroom cabinet? From moisturising lotions that may lead to ...

Daily Mail

Growing research suggests women are unknowingly exposing themselves to thousands of **chemicals** that have been linked to everything from eczema ...

Opinion: Why California should ban widely used **chemical** ingredient

The Mercury News

I've been working on reducing **toxic chemicals** that damage the health of our communities for 30 years since we passed the Toxics Use Reduction Act ...

A **chemical** found in burned, charred, and toasted foods has been linked to cancer. Here's how ...

SFGate

... acrylamide, in accordance with Proposition 65, a state law that requires businesses to alert residents about significant exposures to **toxic chemicals**.

Toxic chemicals can enter food through packaging. We made a list.

EDF+Business - Environmental Defense Fund

Toxic chemicals can enter our foods through food packaging. @EDFBiz and @EDFHealth made a list of the specific chemicals that your company ...

Message

From: Sauerhage, Maggie [Sauerhage.Maggie@epa.gov]
Sent: 2/4/2019 8:58:00 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips: 2/4/2019

Acting Administrator

Agri-Pulse: Washington Week Ahead: Trump talks to nation, EPA nominee set to advance
E&E News: Wheeler tops list of nominees, bills set for vote
The Hill: (Opinion) EPA nominee Andrew Wheeler is a risk to public health

Air Quality

The Detroit News: Officials vow 'tough questions' after odor release from Marathon refinery
Inside EPA: California Backs Sweeping PM NAAQS Attainment Plan But Criticism Persists

Drinking Water

AP: Michigan governor revamps agency after Flint
Bloomberg Environment: Limits on Rocket Fuel Chemical in Drinking Water Delayed a Month

Emissions

Bloomberg Environment: EPA Chief Says Agency, California 'Far Apart' on Car Emissions

Litigation

Inside EPA: Environmentalists Seek To Uphold Broad Pipeline NEPA GHG Precedent

PFAS

Bloomberg Environment: EPA Fluorinated Chemicals Plan Coming Next Week, Wheeler Says
NJ Spotlight: DEP Says EPA Didn't Consider Many Health Risks When Approving PFAS Replacements
The Washington Post: The Energy 202: Senators from both parties press EPA to limit two toxic chemicals
WCBS 880: Schumer Calls On EPA To Set Federal Drinking Water Standards

Research

Politico: Former Koch official runs EPA chemical research

Shutdown

Greenwire: 'Pockets of problems' delayed employee pay

Agri-Pulse: Washington Week Ahead: Trump talks to nation, EPA nominee set to advance

<https://www.agri-pulse.com/articles/11862-washington-week-ahead-trump-talks-to-the-nation-epa-nominee-to-advance>

By Philip Brasher

02/03/2019

President Donald Trump makes his case to the nation this week for his trade and immigration policies, while Senate Republicans look to advance Anthony Wheeler's nomination to be administrator of the EPA.

Also this week, House Democrats will launch a series of hearings intended to focus on their policy priorities, including addressing climate change.

Trump's state of the union message is scheduled for Tuesday night after being delayed by one week because of the government shutdown and his border funding dispute with House Speaker Nancy Pelosi.

Another government shutdown is looming Feb. 15, if congressional negotiators can't reach agreement with the president on his demands for funding a border wall. On Tuesday, Trump will be appealing to lawmakers for bipartisanship. He told reporters last week that the speech will cover "a lot of territory" and that "unity will be part of it."

The White House also indicated that immigration, trade and infrastructure will be among the policy priorities that Trump addresses in the speech.

In an interview with CBS' Face the Nation that aired Sunday, Trump insisted that he is making progress in negotiations with China. "It looks like we're doing very well with making a deal with China. I can tell you this, no two leaders of this country and China have ever been closer than I am with President Xi. We have a good chance to make a deal," Trump said.

Also on Tuesday, the Senate Environment and Public Works Committee is expected to vote on the Wheeler nomination despite continuing criticism from Democrats. Wheeler has been serving as acting administrator of EPA since the resignation of Scott Pruitt last year.

Republicans control the committee and have the votes to send Wheeler's nomination to the floor. The question is how hard and long Democrats will try to delay a floor vote. From the GOP perspective, Wheeler has been more accessible than Pruitt and more effective in implementing the president's regulatory rollback.

At Wheeler's Jan. 16 confirmation hearing, the committee Democrats and Bernie Sanders, I-Vt., challenged him on climate change, mercury emissions and fuel economy standards. Wheeler said climate change was a "huge issue" but not the "greatest crisis."

The committee's top Democrat, Tom Carper of Delaware, said there were no plans to boycott the committee vote. But he said that Wheeler's nomination will be "a lot smoother" depending on how he addresses a series of pending issues, including regulation of mercury emissions and hydrofluorocarbons, and California's effort to have higher fuel emission standards.

In the House, the Natural Resources and Energy and Commerce committees will launch a series of hearings on climate change, starting next week, a key part of the effort by House Democrats to tee up the issue for the 2020 election.

Natural Resources Chairman Raul Grijalva, D-Ariz., told Agri-Pulse the upcoming hearings are intended to "set a tone ... and start talking about science again."

The House Agriculture Committee has no plans to follow suit, at least for now. "Why would we have a hearing? What would the reason be for it? Nobody has given me a reason to do one," said Chairman Collin Peterson, D-Minn.

Also on Tuesday, the comment period is scheduled to end on USDA's proposed revisions to wetland determination rules.

Environmental groups are concerned that the Natural Resources Conservation Service is trying to weaken its wetlands protections by allowing what the groups consider faulty maps to be used to determine whether wetlands exist on the landscape.

Farmers are prohibited from receiving commodity, conservation or crop insurance benefits if they break up wetlands.

The American Farm Bureau Federation is concerned that NRCS is giving itself too much leeway to determine when wetlands exist.

Here is a list of agriculture- or rural-related events scheduled for this week in Washington and elsewhere:

Monday, Feb. 4

- Noon - Heritage Foundation forum, "The Legality of Nationwide Injunctions," 214 Massachusetts Ave NE.

Tuesday, Feb. 5

- Comment period ends on proposed USDA revisions to wetland determination rules.
- 8 a.m. - U.S. Chamber of Commerce annual infrastructure summit, 1615 H St. NW.
- 9 a.m. - Farm Foundation forum, "The Realities of Implementing the 2018 Farm Bill," National Press Club.
- 10 a.m. - Senate Energy and Natural Resources hearing, "Outlook for Energy and Minerals Markets in the 116th Congress," 366 Dirksen.
- 1 p.m. - Foundation for Food and Agriculture Research forum, "Foster Our Future," Ronald Reagan Building.
- 9 p.m. - President Donald Trump gives his state of the union message.

Wednesday, Feb. 6

- 10 a.m. - House Energy and Commerce subcommittee hearing, "Time for Action: Addressing the Environmental and Economic Effects of Climate Change," 2123 Rayburn.
- 10 a.m. - House Natural Resources Committee hearing, "Climate Change: The Impacts and the Need to Act," 1324 Longworth.
- 10 a.m. - Senate Commerce, Science and Transportation hearing, "Winning the Race to 5G and the Next Era of Technology Innovation in the United States,"
- 10 a.m. - Senate Health, Education, Labor and Pensions Committee meeting to consider Labor Department nominees, 430 Dirksen.
- 11 a.m. - USDA releases Highlights From the February 2018 Farm Income Forecast.

Thursday, Feb. 7

- 8:30 a.m. - USDA releases Weekly Export Sales report.
- 10 a.m. - Senate Judiciary Committee meeting to consider the nomination of William Barr to be attorney general, 216 Hart.

Friday, Feb. 8

- National Cotton Council annual meeting, through Sunday, San Antonio, Texas.
- Noon - USDA releases the monthly World Agricultural Supply and Demand Estimates report and monthly Crop Production report.

E&E News: Wheeler tops list of nominees, bills set for vote

Acting EPA Administrator Andrew Wheeler will take another step this week toward confirmation as head of the agency.

Tomorrow, the Senate Environment and Public Works Committee will hold a markup on several bills and nominations, including Wheeler's to be EPA administrator.

Wheeler, who was confirmed by the Senate as deputy chief last April, has held the top job on an acting basis since July. President Trump formally nominated him to lead EPA last month.

EPA's handling of the PFAS class of chemicals has emerged as a potential obstacle for Wheeler's confirmation. Reports last week that EPA planned not to set drinking water standards for two of the chemicals — perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) — troubled both Democrats and Republicans, whose constituents have seen widespread water contamination from the chemicals.

Sen. Shelley Moore Capito (R-W.Va.), who sits on the EPW panel, was one of those lawmakers who voiced apprehension. After meeting with Wheeler last week to address her concerns, Capito said she would support his nomination.

Capito and Sen. Jeanne Shaheen (D-N.H.) led a letter Friday to Wheeler urging him to regulate the chemicals, saying specifically that EPA should include in its upcoming PFAS management plan "a commitment to develop federal drinking water standards for PFOA and PFOS, pursuant to the Safe Drinking Water Act."

"Without enforceable drinking water standards for PFOA and PFOS, it is doubtful that a national management strategy will sufficiently confront the challenges PFAS chemicals pose to states and communities," said the senators in the letter, which Sen. Thom Tillis (R-N.C.), also signed (Greenwire, Feb. 1).

Sen. Tom Carper (D-Del.), ranking member on the EPW Committee, said last week both Democrats and Republicans are worried about PFAS, or per- and polyfluoroalkyl substances. He pushed Wheeler to set a timeline to issue drinking water standards for the chemicals.

"What we would like from him is an ironclad commitment to do everything, move heaven and earth, to get it done by the end of next year," Carper told reporters. "The idea is to build a little fire under EPA and say, 'Let's get this done.' What we're looking for is a sense of urgency."

The acting EPA chief will also have to contend with some of his internal documents going public as senators consider his nomination. Under Freedom of Information Act litigation from Sierra Club, EPA began last week to release emails and other records related to Wheeler.

The agency will continue to produce those records throughout this month and next under the lawsuit. The group's past FOIA legal work helped uncover records that proved embarrassing for Wheeler's predecessor, Scott Pruitt, and helped lead to his resignation from EPA in July (Greenwire, Feb. 1).

Wheeler has not generated the same heated opposition from Democrats as Pruitt, whose ethics troubles plagued his tenure at EPA.

"To be clear, he is not Scott Pruitt, and Scott Pruitt was ethically bereft. ... Andy Wheeler is not ethically bereft, and that's a plus," Carper said last week. "I think the other thing — I don't think he does not go out of his way to demean the folks who work at the EPA and make them feel unappreciated, undervalued. That's important."

Peter Wright, bills

The committee will also vote on the nomination of Peter Wright to lead EPA's Office of Land and Emergency Management.

Wright, a former DowDuPont Inc. lawyer, was up for confirmation last Congress but failed to advance in the Senate. Trump renominated him last month.

The panel will consider Nicole Nason as head of the Federal Highway Administration, former Rep. John Fleming (R-La.) to be assistant secretary of the Commerce Department for economic development and John Ryder to sit on the board of directors for the Tennessee Valley Authority.

Several bills are also on the committee's agenda, including the "Wildlife Innovation and Longevity Driver Act," S. 268, which would promote wildlife conservation, and the "Alaska Remote Generator Reliability and Protection Act," S. 163, which looks to prevent the shutdown of diesel engines due to emissions control devices.

Schedule: The markup is Tuesday, Feb. 5, at 10 a.m. in 406 Dirksen.

The Hill: (Opinion) EPA nominee Andrew Wheeler is a risk to public health

<https://thehill.com/opinion/energy-environment/428272-epa-nominee-andrew-wheeler-is-a-risk-to-public-health>

By Dr. Georges C. Benjamin, Opinion Contributor

02/04/2019

Andrew Wheeler, President Trump's nominee to head the Environmental Protection Agency, does not seem to be interested in protecting the public's health or the environment. Indeed, since replacing Scott Pruitt and stepping in as acting administrator, Wheeler has steadily moved to make the environment less safe while increasing risks to our health.

By any reasonable measure, Wheeler has set the agency on a backward march toward the past when the air, water and land were dirtier, creating unhealthy environments for people across the United States.

Health professionals are rightly sounding the alarms. As a public health professional, I know how dangerous it can be when industry polluters dictate EPA's decisions. If successful, Wheeler's efforts could potentially lead to thousands of additional premature deaths and hundreds of thousands of additional asthma attacks, strokes, heart attacks and cancers.

Among the worst actions taken to date are:

- Undermining the Mercury and Air Toxics Standards, a safeguard instituted to protect children from dangerous neurotoxins and carcinogens spewed by coal-fired power plants. The rule has been in place for years and by EPA's own calculation saves up to 11,000 lives per year. Yet, Mr. Wheeler has targeted the standards, putting vulnerable newborns and children most at risk.
- Attacking clean car standards. Climate change is a direct threat to the health of our planet, and the transportation industry is now the No. 1 source of emissions in the United States. Clean car standards keep billions of tons of greenhouse gases from reaching our air and further endangering our climate. Wheeler, however, is looking to freeze current standards and stall efforts to abate global warming.
- Weakening toxic chemical laws. A 2016 congressional triumph saw bipartisan support for much needed reform of our country's outdated chemical laws. Now, Wheeler is systematically undermining that public health victory by failing to implement transparency requirements and allowing EPA to ignore known exposures to dangerous chemicals when evaluating their risks. The result would be less rigorous safety evaluation and control of new and existing chemicals while consumers, who are often unaware of the potentially dangerous chemicals in many household products, are left in the dark.
- Increasing emissions from power plants. The Obama-era Clean Power Plan established the nation's first limits on carbon pollution from power plants in an effort to reduce greenhouse gas emissions harmful to our planet. The Trump administration has proposed an alternative plan that would result in as many as 1,400 additional premature deaths per year by 2030 in addition to increasing asthma and other respiratory diseases.

- Many other protections are being dismantled, including: weakening national standards on oil and methane pollution, delaying landfill pollution reductions, denying state petitions for relief from downwind pollution, disbanding EPA's independent air pollution health expert panel, weakening carbon pollution standards for new coal-fired power plants, weakening health science reviews of smog standards, delaying reductions of soot from wood smoke pollution, and stalling a ban on a deadly paint stripper, methylene chloride. Most recently, Wheeler's EPA has failed to adequately protect our drinking water from two known toxic chemicals; putting millions of people at risk.

The consequences of Wheeler officially taking the helm of EPA are grave. His agenda would mean more pollution in children's lungs, more contaminants in our communities, and more greenhouse gases putting our planet at risk. This could lead to more sickness and more death. In 2019, in the United States, with the ready ability to reduce pollution and keep families safe and healthy, this is a travesty.

There is much room for debate on the best way to achieve environmental safeguards but over many years Democratic and Republican administrations alike have understood that the basic goal of EPA is to protect the environment and health. The administrator of EPA must completely embrace this mission and lead not only the agency but also all sectors of our society toward the goals of the EPA. Wheeler does not. His track record in the last six months as acting administrator leaves little need to speculate about what kind of administrator Wheeler would be.

As Wheeler continues his nomination process, it is imperative that senators protect their constituents by holding him to this standard with a careful examination of Wheeler's track record. Wheeler's agenda would fail to protect our health and environment — the most important standard for assuming the job on a permanent basis.

Americans deserve better and we should demand better.

Georges C. Benjamin, M.D., is the executive director of American Public Health Association.

The Detroit News: Officials vow 'tough questions' after odor release from Marathon refinery

<https://www.detroitnews.com/story/news/local/detroit-city/2019/02/04/marathon-refinery-odor-aftermath/2769589002/>

By Shawn D. Lewis

2/4/2019

Residents impacted by the rotten odor emitting from the Marathon oil refinery drifting over southwest Detroit over the weekend were not in danger, according to state and city officials.

"The levels indicated with handheld monitors and permanent stations were far below anything that would pose a health or safety risk," said Paul Max of the city of Detroit's Buildings, Safety Engineering and Environmental Department on Monday.

According to the Michigan Department of Environmental Quality, the sources of the odor created by a problem with the refinery's flare gas system are suspected to be hydrogen sulfide and mercaptan compounds. Both of these compounds have extremely low odor thresholds, meaning they can be smelled even at very low levels.

The DEQ issued a statement Monday, saying it "continues to coordinate with EPA and the City of Detroit on air monitoring and response activities related to the malfunction of the coker flare gas system and resulting odors from the Marathon refinery in Detroit."

The DEQ, City of Detroit and federal Environmental Protection Agency staff met with Marathon personnel at the refinery Monday. They were briefed on steps taken to "reduce and reroute gas normally combusted by the flare system in an effort to reduce the rotten egg odors being emitted from the refinery."

Apart from the odor, neither EPA's nor Marathon's air quality sampling "have detected any exceedances of health thresholds," the statement says. "DEQ's Air Quality Division is reviewing monitoring data from DEQ's own ambient air monitoring stations in the area in addition to reviewing the Marathon data."

According to the DEQ, Marathon officials plan to shut down the refinery "in the coming days to make repairs to the coker flare gas system."

According to Marathon Petroleum Corp., owner of the site since 1959, the flares "are safety devices that allow (Marathon) to safely combust excess materials at the refinery," the company said. It is working to deactivate the flare "as quickly and safely as possible."

Steve Considine, a National Weather Service meteorologist, said that winds were blowing from the west on Sunday, about five to 15 mph hour. Odors would travel north and northeast of the source.

Meanwhile on Monday, Max responded to questions about the odor from members of the city's Public Health and Safety Standing Committee.

"Marathon sounded a siren, and they called Homeland Security, but I don't know if they notified the surrounding area," Max said. "I don't know what Homeland Security did with that information."

But residents, he said, were not in danger.

Councilman Scott Benson, the committee's chairman, who, along with other committee members, said he Monday was "satisfied our staff is monitoring the situation since we don't have regulatory authority."

He said this means the measurements were 1,000 times lower than measurements at a harmful level.

"It's unfortunate this happened, and we're looking forward to know how to keep this from happening again," he said.

Benson said "tough questions" will be asked of the DEQ and the EPA during a 10 a.m. Tuesday meeting.

"We will be asking about notification measures, as well as what we are doing to ensure Marathon has the lowest negative impact on residents in the area."

Inside EPA: California Backs Sweeping PM NAAQS Attainment Plan But Criticism Persists

<https://insideepa.com/daily-news/california-backs-sweeping-pm-naaqs-attainment-plan-criticism-persists>

By Curt Barry

2/4/2019

California air board officials have adopted a sweeping plan for the San Joaquin Valley to attain four different fine particulate matter (PM 2.5) standards over the next six years, but many environmentalists remain critical and skeptical of the plan in part because it relies on over \$4 billion of worth of unidentified "financial incentives."

In addition, environmentalists are continuing to attack the validity of numerous decades-old emission reduction credits (ERCs) being used by the oil and gas industry to comply with various air district permits. In response, state air board officials have agreed to review the credits for authenticity.

"We . . . are seriously concerned that what we have in front of us today is less of a complete plan as required under the Clean Air Act and more of an IOU to valley residents that leaves numerous sources of particulate pollution off the table," said Mark Rose, representing the National Parks Conservation Association, during a Jan. 24 California Air Resources Board (ARB) meeting held in Fresno.

"It is clear that both ARB's mobile source plan, and the district's stationary source plan rely unrealistically on the premise that everything in the plan will go just right to allow the valley to reach attainment with all four of these PM 2.5 health standards," Rose added. "This includes an assumption of nearly full compliance with various regulations in the plan, as well as roughly \$5 billion worth of incentive funding, \$4 billion of which has not been identified or secured."

The strategy drafted by the San Joaquin Valley air district and ARB staff aims to meet four federal national ambient air quality standards (NAAQS) for PM_{2.5} for which the valley is in nonattainment: the 1997 24-hour standard of 65 micrograms per cubic meter (µg/m³), the 1997 annual standard of 15 µg/m³, the 2006 24-hour standard of 35 µg/m³, and the 2012 annual standard of 12 µg/m³. Attainment deadlines for the 1997, 2006 and 2012 standards are 2020, 2024 and 2025, respectively.

The strategy, which ARB unanimously approved at the Jan. 24 meeting, was spurred in part by environmentalists' lawsuit against EPA for failing to find ARB did not meet Clean Air Act deadlines for submitting the plans to attain the PM 2.5 standards for the San Joaquin Valley.

The district's portion of the strategy aims to achieve 1.3 tons per day (tpd) of PM 2.5 reductions and 1.9 tpd of nitrogen oxide (NO_x) reductions in 2024, according to ARB's summary. It strengthens a district residential wood-burning rule; includes incentives for charbroiling controls; adds incentives for "low-dust nut harvesting equipment" and alternatives to open agricultural burning pilot projects; and tightens controls on a suite of stationary sources.

Specifically, the plan also aims to reduce emissions from industrial flares, boilers, steam generators and process heaters by featuring advanced emission reduction options; targets internal-combustion engines used at agricultural operations; seeks reductions from glass plants; and includes conservation management practices.

ARB's portion of the strategy states the board's existing mobile source control program achieves most of the needed emissions reductions, but also includes new mobile source emission cuts that come from measures included in the 2016 state implementation plan (SIP) and the district's supplement to the SIP that were adopted in October.

The additional measures are expected to achieve 1 tpd of direct PM_{2.5} cuts and 32 tpd of NO_x reductions in 2024, according to ARB.

Recently adopted ARB measures to help the valley reach attainment include lower opacity limits for heavy-duty vehicles; amended warranty requirements for heavy-duty vehicles; and a heavy-duty vehicle inspection and maintenance program.

Rules and measures ARB expects to adopt in the coming years include a low-NO_x engine standard and low-emission diesel fuel standard.

In addition, ARB expects accelerated turnover of trucks and buses, agricultural equipment and off-road equipment.

However, the plan notes approximately \$5 billion in incentive funding is needed by 2024 to "accelerate [the] last increment of reductions." Further, a "significant commitment" by the agricultural industry is needed to replace approximately 12,000 tractors and equipment.

'Drop in the Bucket'

Agriculture industry representatives mostly praised the plan during the Jan. 24 meeting, but said much more incentive funding is needed to help farms and ranches replace the thousands of dirty tractors and equipment.

"We are concerned, given that the governor's budget only has \$25 million to go towards ag equipment replacement, which is only a drop in the bucket to the estimated \$1.4 billion that replacing those tractors is going to take," said Noelle Cremers, representing the California Farm Bureau Federation.

But environmentalists and equity advocates were the most critical of the plan, especially its reliance on non-regulatory measures.

"EPA's own guidance states that voluntary incentive-based strategies must be surplus, quantifiable, permanent and enforceable," argued Rose. "That standard seems out of reach in this case. Should this plan fail to secure billions in incentives or achieve reasonable progress towards attainment, we are told that ARB will commit to achieving aggregate emission reductions, with no other specifics on what that means. This kind of ambiguous, black-box planning is legally dubious and ignores the voices of valley residents who rely on ARB and the district to clean up air."

A coalition of environmental groups including attorneys with Earthjustice is claiming oil and gas companies are using illegitimate ERCs approved by the district in years past to satisfy permits to pollute at a variety of operations. The coalition has asked ARB to conduct an audit of the district's ERC bank.

"Many of these credits appeared to be invalid when they were originally issued," said Catherine Garoupa White, representing coalition member Californians Against Fracking, during the Jan. 24 ARB meeting. "There is substantial documentation showing that the San Joaquin Valley air district . . . at times went against the recommendations of their own staff in originally issuing some of these credits."

White said the district also "enjoys a special arrangement for what's called 'equivalency demonstration,' which means that old credits stay in the bank. And we are unable to discern how equivalency is calculated. So this piece is unknown to us, and why we're asking for the technical expertise of the" ARB.

The coalition concludes in a previously issued report approximately one-third of the ERCs in the volatile organic compound bank and half the credits in the carbon dioxide-equivalent bank may be invalid, "and so we think that further review of these certificates would likely raise questions of their overall validity," White added. "And of course, if the credits are invalid, then the permits using them to meet their emission reductions would be in jeopardy."

ARB officials agreed to conduct a "review" of the district's ERC bank and report back on the status of the review -- as well as efforts to carry out measures in the PM-attainment strategy -- in September.

AP: Michigan governor revamps agency after Flint

<https://www.apnews.com/e62fb840a14e4f8aa0bf7824666ff4b5>

By John Flesher

2/4/2019

TRAVERSE CITY, Mich. (AP) — Michigan Gov. Gretchen Whitmer plans to restructure the state environmental agency that drew criticism for its handling of the Flint water crisis under former Gov. Rick Snyder, The Associated Press has learned.

The Michigan Department of Environmental Quality will become the Department of Environment, Great Lakes and Energy. The agency will house new public advocacy offices for clean water and "environmental justice" to help ensure fair consideration of low-income and minority community interests, according to officials who briefed the AP ahead of an announcement scheduled for Monday.

"This is about finding real solutions to clean up our drinking water so every Michigander can bathe their kids and give them a glass of water at the dinner table safely," Whitmer, a Democrat elected last November, said in a statement. "We have a chance to build a system that really works so we can protect our water and improve public health."

The environmental quality department came under fire after overseeing Flint's ill-fated switch of drinking water sources in 2014. The city, under supervision of a financial manager appointed by Republican Snyder, stopped buying treated water from Detroit and began drawing from the Flint River — a move intended to save money while a new pipeline from Lake Huron was built.

Investigators later determined that DEQ officials misread federal guidelines and did not require use of corrosion-control additives. The river water gnawed away lead from pipes, joints and fixtures that contaminated drinking water in the majority-black city of 100,000, where in 2015 children were found to have elevated levels of the toxin in their blood.

The department's director and top spokesman resigned, while criminal charges were filed against several other officials. A state task force assigned primary blame to the DEQ, saying that even after its mistakes were clear, it responded with "intransigence and belligerence that has no place in government."

Liesel Clark, whom Whitmer appointed to lead the retooled agency, said the change of administration offers "an opportunity to turn a page and together embark on shared priorities around protecting public health and the environment."

The newly created public advocate offices will make it easier for citizens to register their concerns and improve accountability, Clark said.

"We get better conclusions when we have diverse voices, more voices at the table," she said.

But the plan doesn't change the department's core functions, such as issuing permits for air and water pollution and monitoring compliance. Nor does it promise additional funding or beefed-up staffing for those tasks, even though state and federal reports have described Michigan's DEQ as strapped after years of budget and personnel cuts. Clark said she would make the case for increases with the state budget office.

The new department will incorporate and strengthening an interagency team dealing with the emerging threat of toxic chemicals in drinking water, known as per- and poly-fluoroalkyl substances, or PFAS.

Under Snyder, the team conducted statewide testing of drinking water sources and initiated cleanups. The team will continue that work while emphasizing cleanup of tainted groundwater, Clark said. The department also will consider a tougher standard for initiating action than the current threshold of 70 parts per trillion that is recommended by the U.S. Environmental Protection Agency, she said.

Additionally, the department will have a new office on climate policy that will seek ways to reduce emissions of greenhouse gases and promote renewable energy while helping Michigan adjust to a warmer world. The Michigan Agency for Energy, a separate entity under Snyder, will become part of the Department of Environment, Great Lakes and Energy — as will the Office of the Great Lakes, currently part of the Department of Natural Resources.

Whitmer also said Michigan would become the 20th member of the U.S. Climate Alliance, a coalition of governors seeking state-level action after President Donald Trump announced plans to withdraw the U.S. from an international climate accord.

Bloomberg Environment: Limits on Rocket Fuel Chemical in Drinking Water Delayed a Month

<https://news.bloombergenvironment.com/environment-and-energy/limits-on-rocket-fuel-chemical-in-drinking-water-delayed-a-month>

By Amena Saiyid

2/4/2019

Blame the government shutdown: The EPA won't make the court-mandated deadline yet again to issue a long-awaited drinking water standard for perchlorate, a key rocket fuel chemical.

Instead, the Environmental Protection Agency is now aiming to sign a proposed drinking water standard for perchlorate on May 28, a month later than the court-mandated deadline spelled out in a 2016 agreement reached with the Natural Resources Defense Council.

The agency informed the U.S. District Court for the Southern District of New York Feb. 3 that it needed this extension to make up for the time lost during the government shutdown. The agreement with the NRDC originally required the EPA to issue the proposal Oct. 31, 2018, but a year ago the agency persuaded the court to give it until April 30 to complete its study of the chemical's effects.

The chemical is a component of rocket fuel and fireworks that also was used to control static electricity in food packaging. It can cause thyroid problems when consumed and it's been found in drinking water supplies across the country.

A 2005 EPA survey of drinking water systems found perchlorate in the water of around 160 different utilities that serve 11 million people in 26 different states and two territories.

The case is Nat. Res. Def. Council v. EPA, S.D.N.Y., No. 16-01251, notice 2/3/19.

Bloomberg Environment: EPA Chief Says Agency, California 'Far Apart' on Car Emissions

<https://news.bloombergenvironment.com/environment-and-energy/epa-chief-says-agency-california-far-apart-on-car-emissions>

By Ryan Beene and Jennifer Dlouhy

2/4/2019

The Trump administration and California clean-air officials remain "pretty far apart" in their bid to strike an agreement on automobile fuel economy and greenhouse gas emissions rules as federal regulators race to finalize a key proposal for the auto industry, the U.S. EPA chief said Feb. 4.

"We certainly hope to have a 50-state solution but at the end of the day we have to move forward with regulation," Environmental Protection Agency Acting Administrator Andrew Wheeler told Bloomberg Television in an interview Monday. "California is an important player—an important part of this—but this is not a two-sided negotiation for a national standard."

Wheeler planned to meet with California Air Resources Board Chairman Mary Nichols later on Feb. 4 to discuss the standards, he said. Wheeler said he would prefer to reach a deal with California, but said the state should not be able to dictate the requirements. The EPA and National Highway Traffic Safety Administration have already proposed stripping California of its authority to set its own tailpipe greenhouse gas emission limits for new cars and trucks, a potent bargaining chip to extract concessions from the largest state for U.S. auto sales.

In the interview, Wheeler said California "should not" have that authority.

"That's why we would love to have a 50-state solution so we wouldn't have to pull that trigger," Wheeler said.

Wheeler's comments highlight the stalemate between the Trump administration and California officials over fuel economy and tailpipe carbon emissions standards for automobiles, one of former President Barack Obama's signature policies to ward off climate change.

Wheeler dismissed an earlier counteroffer by California to extend the timeline of the existing requirements, saying it would not lower vehicle prices and improve road safety enough.

The sides have been on a collision course since August, when the EPA and NHTSA proposed capping efficiency standards at a roughly 37-mile-per gallon fleet average from 2020 through 2026—instead of allowing them to rise to almost 50 miles per gallon by 2025 under the existing rules written by the Obama administration.

Wheeler said the administration must finalize the requirements by early April.

"But we do have some hard deadlines," he said, adding "and we are pretty far apart."

—With assistance from Emily Chang.

Inside EPA: Environmentalists Seek To Uphold Broad Pipeline NEPA GHG Precedent

<https://insideepa.com/daily-news/environmentalists-seek-uphold-broad-pipeline-nepa-ghg-precedent>

By Dawn Reeves

2/4/2019

Environmental groups are seeking to persuade a key appellate court to re-confirm its landmark 2017 ruling requiring the Federal Energy Regulatory Commission (FERC) to consider upstream and downstream greenhouse gas impacts of natural gas pipeline projects, though FERC is trying to limit the precedent by arguing such reviews are unnecessary if the end users of the gas are not known.

The arguments are being advanced in two cases before the U.S. Court of Appeals for the District of Columbia Circuit. One suit challenges FERC's GHG analysis in its approval of a Tennessee Gas Pipeline Company project, and a second targets its approval of Dominion Transmission's New Market Project upgrade in New York.

Both suits allege that FERC violated the National Environmental Policy Act (NEPA) because it failed to consider upstream and downstream GHGs of the pipelines, citing the D.C. Circuit's August 2017 decision in *Sierra Club v. FERC* that held the commission unlawfully failed to assess the downstream emissions of a major Southeast pipeline network that would deliver natural gas to Florida power plants.

These cases are distinct from a third related case, *Appalachian Voices, et al. v. FERC*, which challenges FERC's failure to monetize the GHG emissions that it did consider in a NEPA review for the Mountain Valley Pipeline in the Mid-Atlantic. The court heard arguments in that case Jan. 28, though environmentalists appeared to struggle after Judge David Tatel suggested they "forfeited" their argument by failing to challenge FERC's reasons for not using the social cost of carbon (SCC) climate damages tool.

Neither of these cases raise the SCC issue specifically, but they both are seeking to cement the *Sierra Club* precedent and also raise the issue of upstream GHGs, which was not at issue in that case. The groups charge that FERC needed to assess the projects' induced natural gas development as well as the downstream GHGs released when the gas is burned.

Both cases -- *Lori Birkhead, et al. v. FERC*, challenging the Tennessee project, and *Otsego 2000, et al. v. FERC*, challenging the New York project -- have the same briefing schedule. Opening briefs were filed Nov. 26, and FERC's replies were filed Jan. 25. Amicus filings for FERC were submitted Feb. 1, including a joint filing by industry groups such as the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the U.S. Chamber of Commerce and the National Association of Manufacturers.

Environmentalists have until Feb. 15 to file a reply brief, and final briefs are due in both March 8, after which oral arguments would be scheduled. The court could hear both cases together.

FERC's Jan. 25 reply in the *Birkhead* suit case notes the first-of-its-kind legal question at issue. "This case has not been before this Court or any other court. A secondary issue in this case -- whether greenhouse gas emissions stemming from upstream natural gas production activities and downstream natural gas consumption are an indirect or cumulative effect of the Commission's approval of natural gas transportation projects -- is raised in (indeed is the only issue in)" the *Otsego* case.

The *Otsego* case challenges whether FERC "arbitrarily and capriciously departed from" the D.C. Circuit's *Sierra Club* precedent, which "ruled that [NEPA] requires the Commission to evaluate [GHGs] from fossil fuel production and transportation projects. The Court's ruling left no ground for the Commission to shirk its obligations under NEPA, and yet, that is precisely what the commission majority has done in these orders."

The groups add that FERC's split 3-2 approvals for both pipelines came over the "vehement objections" of FERC's two Democratic members, Cheryl LeFleur and Richard Glick.

Additionally the FERC approval in Otsego set a broad policy limiting the need to assess GHGs in most gas projects, and New York charged that the approval was done in that relatively minor upgrade project in an attempt to avoid judicial review, since only the local group Otsego and a local couple had asked for reconsideration of FERC's decision and were the only ones eligible to file suit over the panel's denial of reconsideration, in which FERC first raised the GHG limit.

The commission seeks to distinguish New Market from the Southeast project because the destination of the pipeline's gas is unknown, so downstream emissions are not "indirect" effects under NEPA. FERC raised the GHG distinction for the first time in its rehearing denial order. New York and other states weighed in on environmentalists' behalf in amicus filings.

'Flouts' Precedent

FERC opponents' Nov. 26 opening brief in the Tennessee suit similarly argues that the commission is thumbing its nose at the Sierra Club precedent.

It asks the court to determine whether FERC unlawfully concluded that "it need not consider the reasonably foreseeable indirect upstream and downstream effects of the Project, including the greenhouse gas, health and climate effects when tools used by other federal agencies exist to measures such impacts."

It adds that the order here "continues to flout" the Sierra Club ruling, "an error initially committed" in the New Market rehearing order.

"In Sierra Club, the Commission held that downstream [GHGs] are an indirect effect of natural gas projects, triggering the Commission's obligation under NEPA to estimate the emissions enabled or to explain why it could not do so. Instead the Commission did neither, instead instating that [GHGs] are something other than an 'indirect effect,'" the brief says.

FERC argues it "reasonably declined" to analyze the GHGs from upstream production and downstream end use. "Citizens err in their brief when they contend that this Court's decision in Sierra Club v. FERC establishes a bright-line rule that the Commission must evaluate downstream and upstream [GHGs] as NEPA indirect effects in all circumstances."

Under NEPA, FERC argues, its approval of a project is not the legally relevant cause of any downstream consumption, and because the final destination of the gas in the Tennessee project could only be narrowed down to the Southeast, downstream GHGs "are not reasonably foreseeable."

'Speculative Analysis'

The industry groups' amicus brief argues that FERC need not consider an environmental effect when it has no ability to prevent it, citing a 2004 Supreme Court NEPA ruling in Department of Transportation v. Public Citizen regarding Mexican trucks' operation on U.S. roads.

In this case, petitioners "argue FERC always must conclude that emissions from 'upstream and downstream' activities that are wholly independent from the project at issue are 'indirect effects' that must be included in the NEPA analysis. That kind of absolute rule is contrary to law and would mire FERC and countless projects into needless, speculative analysis," the groups say.

They add that the D.C. Circuit should "continue to allow FERC to exercise its expertise in determining the effects of a project it is charged with approving. In this case, FERC properly determined that [GHGs] from upstream and downstream activities were not indirect effects of FERC's approval of the midstream infrastructure project before it."

Bloomberg Environment: EPA Fluorinated Chemicals Plan Coming Next Week, Wheeler Says

<https://news.bloombergenvironment.com/environment-and-energy/epa-fluorinated-chemicals-plan-coming-next-week-wheeler-says>

By Sylvia Carignan

2/4/2019

The EPA's plan for handling a ubiquitous family of substances contaminating water supplies is nearing completion and could be out next week, the agency's acting administrator said Feb. 4.

The Environmental Protection Agency is working on a strategy to address per- and polyfluoroalkyl substances, which are widespread and may cause adverse health effects, including developmental effects to fetuses and testicular and kidney cancer. No consensus exists on what amounts of the compounds are safe to consume, but the agency is considering whether to set limits for two of the compounds in drinking water.

"Hopefully, the whole plan will be finished by next week," acting EPA Administrator Andrew Wheeler told Bloomberg Feb. 4. "That's our goal."

The plan had been delayed by the partial government shutdown, which ended Jan. 25.

The contaminants, also known as PFAS, have been used to manufacture nonstick and stain-resistant coatings in clothing, fast-food wrappers, carpets, and other consumer and industrial products.

NJ Spotlight: DEP SAYS EPA DIDN'T CONSIDER MANY HEALTH RISKS WHEN APPROVING PFAS REPLACEMENTS

<https://www.njspotlight.com/stories/19/02/03/dep-says-epa-didnt-consider-many-health-risks-when-it-approved-pfas-replacements/>

By Jon Hurdle

2/4/2019

New Jersey scientists are accusing the federal government of failing to consider many health risks posed by a group of chemicals that are designed to substitute for some of the controversial PFAS substances which are now being strictly regulated by the state. Regulation of PFAS has been deemed necessary because of growing evidence that they are a danger to public health.

The substitutes, known as GenX and PFBS, may be as toxic as the chemicals they are replacing but have been approved by the U.S. Environmental Protection Agency even though it did not examine their links to cancer and reproductive and developmental problems in humans before allowing industry to use the new chemicals, the state scientists said.

The comments from the New Jersey Department of Environmental Protection are contained in its response to an EPA study on the toxicology of the substitute chemicals and include strong criticism of the federal agency's evaluation.

"Subsequent to USEPA's approval, GenX was indeed found to cause reproductive, developmental and carcinogenic effects," the DEP wrote in a submission to EPA, dated January 22, and posted to the government's Regulations.gov website late last week.

It said the substitute chemicals have been found in many public and private drinking water sources around the world including in "private potable wells" at an "industrial source" in New Jersey, and at an unidentified site in the Delaware River between New Jersey and Pennsylvania.

Source tracked to West Deptford

The DEP also cited a chemical it called "Solvay's Product," which it says has been "tentatively identified in environmental media in New Jersey." The chemical has been given an identifying number by the Chemicals Abstract Service indicating that it has been found in soil near the site of Solvay Specialty Polymers in West Deptford, in Gloucester County, according to EPA records.

In 2013, high levels of the chemical PFNA — part of the PFAS family — were found near the Solvay facility, which used the chemical there until 2010.

The DEP said the EPA used only “minimal” toxicity data to assess the Solvay chemical, and did not study whether it causes cancer or whether it has reproductive or developmental effects. The chemical has been approved by the EPA.

Solvay spokesman David Klucsik declined to respond to the DEP comments on Sunday, saying he was unable to reach his technical team.

Referring to GenX contamination worldwide, the DEP said, “It is unfortunate that USEPA did not develop toxicity values for GenX until after this widespread contamination was discovered and became a public concern.”

GenX is the trade name for high-performance fluoropolymers such as non-stick coatings that are made without using PFOA, another PFAS-family chemical that has been linked to health problems including cancer and elevated cholesterol.

Unspecified ‘health effects’

The EPA, which does not regulate GenX or any other PFAS chemical, says GenX has unspecified “health effects” on kidneys, blood, immune systems, the developing fetus and especially the liver. Data on the chemical’s effects are also “suggestive of cancer,” the agency says.

Notably, the chemical has been found in the Cape Fear River, North Carolina where state officials in 2017 traced the contamination to a Chemours facility at Fayetteville and halted the discharges in order to restore water quality to within health limits, according to the state’s Department of Environmental Quality.

PFBS, a replacement for PFOS, another member of the PFAS family, also has health effects, particularly on the thyroid and kidneys, and on reproductive organs and the developing fetus, the EPA says.

Despite those concerns, the EPA evaluated only a “small percentage” of the 900 studies that have been published on the so-called short-chain chemicals that are designed as replacements for long-chain versions such as PFOA and PFOS, the DEP said.

It’s not safe to assume that the replacement chemicals are a safe substitute for the long-chain versions, the department said. It also argued that many of the new chemicals, like the better-known PFAS, don’t break down in the environment, raising more concerns for human and ecological health.

‘Patchwork’ of standards for health, drinking water

The EPA said Friday it would not be able to comment in time for the publication of this story. The agency is already under pressure from PFAS campaigners after a press report last week that the agency had decided not to regulate PFOA and PFOS, two of the most widespread PFAS chemicals, despite calls by advocates and some state officials for enforceable national standards to be set.

The report, though not confirmed by the EPA, prompted a February 1 letter from 20 U.S. senators including New Jersey’s Bob Menendez, Pennsylvania’s Bob Casey and Delaware’s Tom Carper, saying such a decision would be a “major setback” to curbing the chemicals which are now subject to what the senators called a “patchwork” of conflicting drinking water standards and health guidelines. The senators called on the EPA to set national standards for the chemicals.

In New Jersey, the DEP is in the process of implementing a maximum contaminant limit for PFNA and is considering recommendations from the Drinking Water Quality Institute for tough new limits on PFOA and PFOS.

Environmentalists, who have long criticized the EPA for failing to regulate PFAS, said the DEP’s comments show that the EPA has also been lax in its evaluation of the replacement chemicals.

“GenX, PFBS, and the Solvay replacement are some of the hundreds of replacements that have been approved by EPA without enough toxicity data, using the public as guinea pigs, just like the dangerous PFAS compounds they replaced,” said Tracy Carluccio, deputy director of the Delaware Riverkeeper Network, and a longtime campaigner for state and national regulation of the chemicals.

Allowing the replacement chemicals is ‘unconscionable’

She called it “unconscionable” that the EPA is allowing the replacement chemicals to be used. She said the growing body of research by state scientists such as New Jersey’s DWQI and by advocacy groups provides clear evidence of the chemicals’ danger to public health that the EPA can’t say it didn’t know about.

The DEP’s concerns echo those made by Dr. Keith Cooper, chairman of the DWQI, who said at an NJ Spotlight roundtable in December that many of the replacement chemicals have not been through a full screening but appear to be just as toxic as the chemicals they are designed to replace.

Anthony Matarazzo, Senior Director of Water Quality and Environmental Management at New Jersey American Water, the state’s biggest water utility, said it looks like the EPA failed to do its due diligence in considering whether GenX and other replacement chemicals are linked to cancer and other health hazards.

“My initial impression, as DEP indicated, is that EPA failed to do sufficient due diligence in approving the PFOA/PFOS alternatives,” said Matarazzo who is also a member of the DWQI.

The Environmental Working Group, a national advocacy nonprofit, also accused the EPA of not doing enough to determine whether GenX and other replacement chemicals are safe.

“Given what we know now about its hazards to human health, the EPA should have done a lot more research on GenX before approving it as a replacement for PFOA,” said Olga Naidenko, senior science advisor for EWG.

The Washington Post: The Energy 202: Senators from both parties press EPA to limit two toxic chemicals

https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2019/02/04/the-energy-202-senators-from-both-parties-press-epa-to-limit-two-toxic-chemicals/5c57476d1b326b66eb098601/?utm_term=.9bc2d764b30f

By Dino Grandoni

2/4/2019

One-fifth of the Senate is pressing the Environmental Protection Agency to do more to prevent two toxic chemicals from getting into Americans' drinking water — after a report last week indicating the agency is not going to restrict them under the Safe Drinking Water Act.

In a letter led by Jeanne Shaheen (D-N.H.) and Shelley Moore Capito (R-W.Va.), 20 senators from both sides of the aisle urged the agency to develop standards for a pair of chemicals — perfluorooctanoic acid and perfluorooctanesulfonic acid, more commonly known as PFOA and PFOS — found in millions of Americans' drinking water. They are demanding the federal government remove these toxic chemicals from drinking water and regularly test for them.

“EPA’s inaction would be a major setback to states and affected communities,” the senators wrote to acting agency administrator Andrew Wheeler. “Therefore, we urge you to develop enforceable federal drinking water standards for PFOA and PFOS.”

The letter is the latest escalation of tensions between members of Congress and the EPA over the regulation of a class of chemicals that has proven to be a headache for Trump administration officials at the agency. The EPA came under criticism last year for delaying the release of a health study on the chemicals after a White House official warned in an internal email that its release could turn out to be a “public relations nightmare.” The EPA earned more bad press after kicking reporters out of a forum on the issue in May.

The letter Friday puts Wheeler in a potentially tough spot. His nomination to officially become the EPA's head official — and drop the "acting" title — is up for a vote this week in the Senate Environment and Public Works Committee. Capito sits on the panel, where Republicans hold a slim one-vote majority.

Capito met with Wheeler this past week seeking reassurance about the PFOA and PFOS management plan. Capito spokesman Tyler Hernandez said the senator still "plans to support his nomination."

When asked if she expects the EPA to reverse course, Shaheen said in an interview: "I'm not optimistic but I'm hopeful." "I hope what they're gonna do is reconsider their decision," she added. "Safe drinking water, so people feel like they can turn on the tap and they can drink water without having them have an adverse effect on their health or their family's health — I think people in this country believe that's fundamental to being able to live in America."

In response to Politico's report that the agency was not going to invoke the Safe Drinking Water Act to restrict the chemicals, the agency emphasized it has not finalized its management plan.

David Ross, the assistant administrator of the EPA's Office of Water, said in a statement "any information that speculates what is included in the plan is premature."

Yet the number of senators who signed the letter is an indication of how widespread pollution from this class of chemicals has become. Once considered a wonder for their ability to repel both oil and water, the chemicals were widely used by manufacturers to make products with nonstick surfaces and by the military in specialized foams to put out jet-fuel fires.

But the chemicals also had dangerous downsides for human health, having been linked to increased cholesterol levels, low birth weights, thyroid hormone disruption and various cancers, according to the agency.

And House Democrats, who now control that chamber, are also signaling they may use their new majority power to try to compel the EPA to regulate the chemicals presence in drinking water. Late last month, the House Energy and Commerce Committee, which oversees the EPA, renewed a request for information from the Trump administration on its efforts to stall the release of the chemical hazard study, while a bipartisan group of House members formed a new task force on the chemicals.

"It is a travesty that we are even having a conversation," said Rep. Antonio Delgado (D-N.Y.), who helped create the task force. "We're going in the wrong direction."

His upstate New York district includes the village of Hoosick Falls, whose residents in recent years discovered their tap water had been contaminated with PFOA. Delgado, too, asked the EPA in a letter to determine a maximum contaminant level for PFOA and PFOS in drinking water.

The other Republican besides Capito to sign the Senate letter was Thom Tillis of North Carolina. Both senators face reelection in 2020.

In 2017, Tillis and North Carolina Republican Richard Burr, opposed the nomination of a University of Cincinnati professor and chemical industry consultant named Michael Dourson as the EPA's top chemical safety official. They did so over concerns about his record of finding little or no human health risks for many chemicals.

Drinking water concerns are acute in North Carolina, which is home to a military base whose water supply is contaminated by an unregulated compound known as Gen X — the trade name for a chemical similar to PFOA and PFOS. The latest defense reauthorization bill for a health impact study on the chemicals set to start this summer.

Capito, similarly, represents a state with its own water contamination issues. PFOA used by DuPont to manufacture Teflon in Parkersburg, W.Va. has worked its way into the water supply, resulting in a \$671 million payment to settle thousands of lawsuits.

WCBS 880: Schumer Calls On EPA To Set Federal Drinking Water Standards

<https://wcbs880.radio.com/articles/sen-schumer-calls-epa-set-drinking-water-standards-toxic-chemicals>
2/4/2019

NEW YORK (WCBS 880) — Sen. Chuck Schumer on Monday called on the Environmental Protection Agency to make sure drinking water is at safe standards.

During a visit to Long Island, Schumer said it's vital that the EPA set federal drinking water standards for the cancer-causing chemicals PFOS and PFOA that have been turning up in private wells and public water systems in Suffolk County.

"I met with the nominee for EPA and I asked him to put out these regulations and he said he's not sure he would do it. Today, we are announcing we're going to try to hold up his nomination unless he does this and, if that doesn't work, pass legislation requiring the federal government put out standards about PFOA's and PFOS's," Schumer said.

He notes that the chemicals can be toxic and that there is no current standard for them. They are often found in laundry detergent and firefighting foam.

The chemicals have been plaguing Long Island was months and lawmakers have addressed concerns of toxic drinking water in the past.

Adrienne Esposito, of the Citizens Campaign for the Environment, also tells WCBS 880's Sophia Hall that it can be quite simple to remove the chemicals from drinking water.

"The PFOA's and PFOS's can be filtered out with carbon filters," she said.

Though, the trouble lies in the fact that many private wells and many public water systems do not yet have carbon filtration systems installed.

Politico: Former Koch official runs EPA chemical research

<https://subscriber.politicopro.com/energy/article/2019/01/former-koch-official-runs-epa-chemical-research-1136230>

By Annie Snider
02/04/2019

The Trump administration has placed a former Koch Industries official in charge of research that will shape how the government regulates a class of toxic chemicals contaminating millions of Americans' drinking water — an issue that could have major financial repercussions for his former employer.

David Dunlap, a deputy in EPA's Office of Research and Development, is playing a key role as the agency decides how to protect people from the pollution left behind at hundreds of military bases and factories across the country.

President Donald Trump has not nominated anyone to run the office. That effectively allows Dunlap to avoid the Senate confirmation process while overseeing a central part of EPA's work that could impose cleanup costs on companies that have used the chemicals, including major Koch subsidiary Georgia-Pacific. The paper and pulp conglomerate is already facing at least one class-action lawsuit related to the chemicals.

Previously undisclosed documents obtained by POLITICO show Dunlap began working on the issue almost immediately upon arriving at EPA in October. He had spent the previous eight years as Koch Industries' lead expert on water and chemical regulations, a position that typically includes helping companies to limit regulatory restrictions and liability for cleanups.

Democratic lawmakers and environmentalist say the prevalence of administration officials who came from the chemicals industry contributes to its hands-off approach to the chemicals, which are appearing in drinking water supplies across

the country to rising public alarm. Known as per- and polyfluoroalkyl substances, or PFAS, the chemicals have been linked with kidney and testicular cancer, as well as other ailments.

Both Republicans and Democrats have urged a stronger approach from acting EPA Administrator Andrew Wheeler — who faces a confirmation vote in the Senate Environment Committee Tuesday — but he has stopped short of using all the tools in the agency's arsenal.

Just last week, POLITICO reported the agency has decided against setting drinking water limits for the two most well-understood chemicals in the class in a forthcoming plan for the chemicals, and the new documents show Dunlap was involved in high-level meetings preceding that decision.

Sen. Tom Carper of Delaware, the top Democrat on the Senate Environment and Public Works Committee, said Dunlap's hiring adds to his concerns about the Trump administration's handling of the issue.

"Coming on the heels of Mr. Wheeler's failure to commit to setting a drinking water standard for PFAS, this potential conflict of interest within the agency paints a bleak picture about EPA's priorities on chemical safety with respect to these particular substances. I look forward to learning more about Mr. Dunlap's role in the development of EPA's PFAS management plan," Carper said in a statement.

Dunlap's ethics agreement bars him from "participating in any particular matter involving specific parties" related to Koch Industries, but the agency's ethics officials have typically taken a narrow interpretation of such prohibitions. And while Dunlap voluntarily recused himself from work on formaldehyde, which Georgia-Pacific produces, the agreement includes no mention of PFAS.

Koch Industries spokesperson David Dziok said that Dunlap worked on a broad set of issues related to water and chemicals during his time with the company, but that "PFAs were not part of the portfolio he managed."

Dunlap did not respond to a request for comment. EPA did not answer specific questions about Dunlap's involvement in the agency's work and his potential conflict of interest.

Dunlap's calendars, obtained by POLITICO under the Freedom of Information Act, show he participated in at least nine PFAS meetings in his first six weeks on the job, including an Oct. 22 briefing with Wheeler, chief of staff Ryan Jackson and other top political officials. At the time, agency leaders were writing a wide-ranging chemical management plan in which they decided not to set a drinking water standard for the two specific chemicals — PFOA and PFOS. That plan has been under review at the White House since December.

While those two older chemicals are no longer used in the U.S., EPA estimates that there are between 5,000 and 10,000 similar chemical compounds, used in everything from nonstick cookware to water resistant jackets to microwave popcorn bags. Industry has argued that the newer compounds are less dangerous to human health, but scientists say there is reason to worry that the entire class of PFAS compounds poses a risk. Public health advocates are pushing EPA to regulate the chemicals as a class, arguing that evaluating each one individually will take decades, if it happens at all.

The calendars also show Dunlap helping to shape EPA's approach to these newer compounds that are still in use. He participated in an Oct. 31 call with career staff in his division on two chemicals, GenX and PFBS, for which they were preparing health assessments. Research has shown those new chemicals can also be dangerous, and that those dangers may be greater when people are exposed to them in combination with other chemicals, as they often occur in drinking water. Environmental groups have said the chemicals should be evaluated together to account for those risks, but EPA took the opposite approach when it released the GenX and PFBS health assessments two weeks later.

Then on Nov. 5, Dunlap was scheduled to join a call with staff scientific leads to discuss the next slate of chemicals for which they would prepare health assessments. Dunlap's former employer has a stake in which chemicals EPA focuses on: A company spokesperson said Georgia-Pacific may still be using PFAS in its products, as it has in the past, but she

would not say which specific chemicals it uses. There are very few legal requirements for companies to tell the public or regulators which chemicals they use in their processes and at which factories.

In response to questions about Dunlap's role, an EPA spokesperson said, "Addressing PFAS is an Agency-wide effort with David Ross, the EPA's Assistant Administrator for the Office of Water, serving as the EPA staff lead on addressing PFAS."

However, the research overseen by Dunlap lays the groundwork for any regulatory decisions Ross is coordinating. EPA officials have underscored the importance of research to their PFAS work in a number of public presentations, including briefings to the agency's Science Advisory Board and at meetings in affected communities.

Georgia-Pacific, which manufactures products like Brawny paper towels and Dixie cups, has not only used PFAS in some of its food packaging products, but has also owned facilities where the chemicals were disposed, creating a cleanup liability that could prove costly.

The company is already facing a class-action lawsuit from citizens in the town of Parchment, Mich., where last summer state officials discovered the chemicals in drinking water at concentrations as much as 26 times higher than EPA's recommended limit. That contamination was traced to a paper mill that Georgia-Pacific previously had a stake in.

Georgia-Pacific spokesperson Karen Cole said the company believes that "only a very small percentage of our food wrap and related products — if any" contain the chemicals today, and noted that PFOA and PFOS were phased out of use in food wrappers "several years ago." She said Georgia-Pacific does not apply the PFAS itself, but gets paper from a supplier that in some cases has previously treated it with PFAS.

"We are currently evaluating past manufacturing practices to better understand any potential previous use of these materials," she said by email.

In his LinkedIn profile, Dunlap describes himself as the "lead and subject matter expert" on water and chemicals issues for Koch's entire suite of companies during his eight years there. Even if he did not directly manage the company's work on PFAS, it would be "hard to believe that he had not touched any decisions on PFAS with that broad of a scope of responsibilities," said Erik Olson, who leads the Natural Resources Defense Council's public health work.

Olson said Dunlap's oversight of EPA's research on the chemicals raises red flags. "You want an independent, hardheaded scientific review of these issues; you don't want somebody who is already taking the industry party line," he said.

According to federal disclosures, Koch Industries spent at least \$90,000 in 2018 lobbying on issues related to chemicals. The American Chemistry Council, the chemicals industry's largest lobbying group, which Georgia-Pacific has worked through in the past to influence policy on toxic chemicals, spent \$9 million last year lobbying lawmakers, EPA and other agencies, including on PFAS issues.

The Food and Drug Administration governs the use of chemicals in food wrappers, and has approved 21 PFAS blends for such use, according to Tom Neltner, the chemicals policy director for the Environmental Defense Fund who has conducted research on paper mills' use of the compounds. But he said the greater liability that paper companies like Georgia-Pacific may face comes from manufacturing waste that contains the chemicals, such as leftover paper trimmings.

That waste can end up in landfills or compost that is used to grow fruits and vegetables, Neltner said.

"There's a legitimate threat there and, from my perspective, the conflicts of interest that [Dunlap] has having worked as a regulatory compliance director at Georgia-Pacific raises questions about whether he can make those objective decisions or should be recused," he said.

Moreover, Georgia-Pacific may well have cleanup responsibility for other sites like the one in Michigan. During the time it operated the manufacturing plant, from 2000 to 2015, Georgia-Pacific closed a landfill that had also been used by other companies, including at least one that the company says it believes used a 3M-patented PFAS. The class-action lawsuit filed by citizens alleges that Georgia-Pacific did not properly close the landfill to prevent the chemicals from leaching into nearby water. Georgia-Pacific is currently working with the state of Michigan to trace the chemicals' movement through groundwater.

Under the Superfund law, a company can be held liable for cleanup even if it wasn't primarily responsible for the contamination.

Greenwire: 'Pockets of problems' delayed employee pay

<https://www.eenews.net/greenwire/2019/02/04/stories/1060119565>

By Rob Hotakainen and Kevin Bogardus, E&E News reporters

2/4/2019

The Interior Department said today that "isolated pockets of problems" prevented some of its employees from receiving their full back pay after the five-week partial government shutdown.

"Across our 60,000 employees, there were isolated pockets of problems detected late last week," Faith Vander Voort, a spokeswoman for Interior, said this morning. "The vast majority of those were solved over the weekend."

It's unknown exactly how many employees or agencies were affected by the snafu.

The issue has prompted plenty of anonymous online complaints from employees, who discovered the pay shortages when they returned to work last week.

On its website, Interior told employees that its top priority "is getting you paid as quickly as possible."

Employees were told that they should receive all of their retroactive pay by Feb. 12 and that they'd be paid for the number of hours they had been scheduled to work during the shutdown.

"There will be additional pay corrections processed in the following pay periods to ensure your back pay is accurate," the memo said.

Neither Interior nor the park service would say what had caused the glitch. NPS also declined to say how many of its employees had not yet received their full pay.

National Parks Traveler, a nonprofit media organization that covers the parks, reported last week that in an internal memo, NPS acknowledged that processing payroll after the shutdown would "require an intense amount of work."

The back-pay problem is only one of many facing the park service after the longest government shutdown in history.

While NPS kept some of its parks open during the shutdown, officials estimated the agency lost an average of \$400,000 in daily revenue. That means the agency could have lost up to \$14 million during the 35-day shutdown.

In addition, NPS angered some lawmakers by using visitor fee revenues on basic operations during the shutdown. Under federal law, that money must be spent on visitor improvements. A House Appropriations subcommittee has scheduled a hearing on the topic for Wednesday.

In the meantime, NPS continues to inventory the damage at its 418 sites.

While employees await their full pay, some of them have been faced with ugly cleanup jobs.

At Death Valley National Park in California, one of the first parks to offer an early assessment, officials said the preliminary reports of vandalism and garbage and human waste found in the park so far "are disturbing."

Mike Reynolds, the park's superintendent, said the mess included at least 1,665 clumps of toilet paper and 429 piles of human feces.

"And that's an incomplete figure," he said. "We only counted in a few areas. We estimate there was at least half a ton of human waste deposited outside restrooms."

Back pay comes in at EPA

Other agencies affected by the partial government shutdown are also dealing with distributing back pay. EPA employees received back pay last week, but some noticed a few issues in those payments.

One EPA employee reported receiving payments on two different days last week — one less than a whole paycheck by several hundred dollars, the other less than half a regular paycheck.

"It's like hitting your parents up in high school and they just fish around in their pocket to give you enough to get by but less than you want and asked for," said the employee.

Another EPA employee who received back pay last week noticed some glitches in those payments too.

"There were tax estimates and other differences, so the amount was not exact. We have been told it will be corrected in future payments," said the employee.

According to EPA, the agency's payroll provider, the Department of Interior's Interior Business Center, began issuing back pay to EPA employees last week.

Acting EPA Administrator Andrew Wheeler said in an internal email last week that back pay would arrive as early as Wednesday last week. "Among the first actions is to ensure your back pay is restored as quickly as possible," he told employees (Greenwire, Jan. 28).

Under the 2019 Government Employee Fair Treatment Act, federal agencies are required to give back pay to their furloughed employees as soon as possible.

To comply with that law, the EPA financial office limited access to PeoplePlus, its payroll system, last week, according to another message sent Jan. 28. EPA also said in the message that employees could see deposits in their bank accounts on different days due to their financial institutions' schedules.

The agency said the next scheduled pay day is Feb. 12. That paycheck will reflect default pay for all employees from Jan. 20 to Feb. 2, the message said.

EPA has also posted online a memo by the Interior Business Center, dated Friday, that explains some hiccups in back pay. The business center processes payroll for several agencies.

Payments received by employees last week were "interim (i.e. not full) payments of back pay," according to the memo. It noted that some employees may notice the "off-cycle payments" were several hundred dollars short of their regular paychecks.

"Off-cycle interim payments were calculated in a way to minimize the possibility of overpayments so that employees would not owe a debt to the federal government, while also paying employees as quickly as possible during the week of January 28, 2019," said the memo.

From: Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]
Sent: 2/1/2019 8:23:40 PM
To: Dunn, Alexandra [dunn.alexandra@epa.gov]
Subject: Fwd: OCSPP Shutdown Impacts
Attachments: OCSPP Shutdown Impacts 2.01.2019.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Hanley, Mary" <Hanley.Mary@epa.gov>
Date: February 1, 2019 at 2:06:40 PM EST
To: "Bertrand, Charlotte" <Bertrand.Charlotte@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>
Subject: **OCSPP Shutdown Impacts**

Here is the revision which is about 1.5 pages.

OCSPP Priority Deadlines Impacted by the Shutdown

Cessation of work on Prioritization of the existing chemicals compresses by 5 weeks the timeframe to meet statutory deadlines – Work to designate 20 high priority chemicals and 20 low priority chemicals by the December 22, 2019 deadline has been delayed by 5 weeks. A required 9-12-month Prioritization process for these chemicals recognizing will need to begin by March 22, 2019.

Cessation of work on Risk Evaluations for the first 10 chemicals delays by 5 weeks the timeline for completion –Final draft risk evaluations will be completed 5 weeks after the statutory deadline of December 22, 2019 (with a possible 6-month extension).

Peer Reviews are delayed by approximately 30 to 60 days – Seven topics tentatively to be reviewed by the TSCA SACC and the FIFRA Scientific Advisory Panel (SAP) in 2019 are delayed. Also, the meeting to review **Pigment Violet (PV) 29 draft risk evaluation** has been postponed.

Methylene Chloride Paint and Coating Removal Rulemaking is delayed from January to the end of February.

New Chemicals Review Applications are extended (using TSCA authority) by 33 days –During the shutdown, a total of 24 New Chemical Notices were received into EPA's CDX system but not processed; on-going reviews and regulatory work for approximately 471 PMN/SNUN/MCAN cases and 100 exemption application cases and modifications ceased during the shutdown.

Formaldehyde Technical Issues Final Rule Development is delayed from March to April; an associated public workshop will also be delayed although dates had not yet been made public.

Cessation of work on PBT Rules compresses by 5 weeks the timeframe meet statutory deadline of June 22, 2019.

Significant Impacts on Pesticide Registration Actions will involve a minimum delay of 2-3 months.

150 registration application actions with statutory due dates under the Pesticide Registration Improvement Act (PRIA) were missed, 500 new applications also with statutory due dates were received during the shutdown, and publication of over 20 Federal Register Notices are now delayed. Ripple effects on FY19 registration targets are expected since OPP will need to renegotiate previous actions, allow time to work with companies to determine their highest priorities, address other high priority work that came in during the shutdown, and obtain review/approval of final documents and FRNs.

Other high profile chemical specific implications with delays up to one year:

- <!--[if !supportLists]--><!--[endif]-->Sulfoxaflor, an alternative to chlorpyrifos, is delayed at least 3 months (reasons cited above).
- <!--[if !supportLists]--><!--[endif]-->Isoxaflutole (for use on genetically engineered soybeans), ongoing work on significant risk assessment and risk management issues is delayed. Given the risk issues, a pre-shutdown deadline did not exist.
- <!--[if !supportLists]--><!--[endif]-->Experimental use permit reviews for new mosquito control technologies are delayed, which will likely impact the ability to conduct field trials, as they must occur during mosquito season in 2019, and therefore likely be delayed by one year.
- <!--[if !supportLists]--><!--[endif]-->Ongoing work to implement the 2018 dicamba registration decision, including protocol reviews and efforts with states to resolve issues related to dicamba labeling compliance and training, are also delayed by ~3 months (reasons cited above).

Significant Impacts to Pesticide Registration Review Measures will be delayed 2-3 months.

OPP expects the shutdown will reduce target FY19 registration review deliverables of draft risk assessments (-15), proposed interim decisions (-18), and interim decisions (-18) and will likely have ripple effects beyond FY19. Proposed interim decisions for high priority pesticides including glyphosate (Roundup), neonicotinoids, pyrethroids, and soil fumigants will be delayed 2-3 months. Delays due to (1) the need to extend all public comment periods for Q4 FY18 deliverables by 45 days to address [regulations.gov](https://www.regulations.gov) issues that occurred during the shutdown, (2) the need to complete and batch deliverables into quarterly FRNs, and (3) obtain review of FRNs/deliverables.

Two Significant Public Health Laboratory Projects will be delayed 2-3 months

Including work with CDC to evaluate antimicrobial pesticides against an emerging hospital pathogen, *Candida auris*, and work with OW on a method for evaluating the efficacy of disinfectants against *Legionella* in cooling tower water systems. Will need to re-initiate lab studies/data collection and conversations with stakeholders.

January 30, 2019 Release of Guidance to Implement the Certification of Pesticide Applicators Rule will be delayed 1 Month.

Certifying authorities have requested the information as soon as possible to meet the regulation's March 4, 2020 submission deadline and may be impacted by the delay.

Message

From: Faeth, Lisa [Faeth.Lisa@epa.gov]
Sent: 2/1/2019 4:25:51 PM
To: Anderson, Steve [Anderson.Steve@epa.gov]; Askinazi, Valerie [Askinazi.Valerie@epa.gov]; Baptist, Erik [Baptist.Erik@epa.gov]; Barkas, Jessica [barkas.jessica@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Blair, Susanna [Blair.Susanna@epa.gov]; Buster, Pamela [Buster.Pamela@epa.gov]; Canavan, Sheila [Canavan.Sheila@epa.gov]; Caraballo, Mario [Caraballo.Mario@epa.gov]; Carroll, Megan [Carroll.Megan@epa.gov]; Cherepy, Andrea [Cherepy.Andrea@epa.gov]; Christian, Myrta [Christian.Myrta@epa.gov]; Corado, Ana [Corado.Ana@epa.gov]; Davies, Clive [Davies.Clive@epa.gov]; Dekleva, Lynn [dekleva.lynn@epa.gov]; Devito, Steve [Devito.Steve@epa.gov]; Doa, Maria [Doa.Maria@epa.gov]; Drewes, Scott [Drewes.Scott@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Edelstein, Rebecca [Edelstein.Rebecca@epa.gov]; Edmonds, Marc [Edmonds.Marc@epa.gov]; Elwood, Holly [Elwood.Holly@epa.gov]; Faeth, Lisa [Faeth.Lisa@epa.gov]; Farquharson, Chenise [Farquharson.Chenise@epa.gov]; Fehrenbacher, Cathy [Fehrenbacher.Cathy@epa.gov]; Feustel, Ingrid [feustel.ingrid@epa.gov]; Frank, Donald [Frank.Donald@epa.gov]; Gibson, Hugh [Gibson.Hugh@epa.gov]; Gimlin, Peter [Gimlin.Peter@epa.gov]; Gorder, Chris [Gorder.Chris@epa.gov]; Gordon, Brittney [Gordon.Brittney@epa.gov]; Grant, Brian [Grant.Brian@epa.gov]; Gray, Shawna [Gray.Shawna@epa.gov]; Groeneveld, Thomas [Groeneveld.Thomas@epa.gov]; Guthrie, Christina [Guthrie.Christina@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Helfgott, Daniel [Helfgott.Daniel@epa.gov]; Henry, Tala [Henry.Tala@epa.gov]; Kapust, Edna [Kapust.Edna@epa.gov]; Kemme, Sara [kemme.sara@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Krasnic, Toni [krasnic.toni@epa.gov]; Lavoie, Emma [Lavoie.Emma@epa.gov]; Lee, Mari [Lee.Mari@epa.gov]; Lee, Virginia [Lee.Virginia@epa.gov]; Leopard, Matthew (OEI) [Leopard.Matthew@epa.gov]; Liva, Aakruti [Liva.Aakruti@epa.gov]; Lobar, Bryan [Lobar.Bryan@epa.gov]; Mclean, Kevin [Mclean.Kevin@epa.gov]; Menasche, Claudia [Menasche.Claudia@epa.gov]; Morris, Jeff [Morris.Jeff@epa.gov]; Moss, Kenneth [Moss.Kenneth@epa.gov]; Mottley, Tanya [Mottley.Tanya@epa.gov]; Moyer, Adam [moyer.adam@epa.gov]; Myers, Irina [Myers.Irina@epa.gov]; Myrick, Pamela [Myrick.Pamela@epa.gov]; Nazef, Laura [Nazef.Laura@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Owen, Elise [Owen.Elise@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Passe, Loraine [Passe.Loraine@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Pratt, Johnk [Pratt.Johnk@epa.gov]; Price, Michelle [Price.Michelle@epa.gov]; Reese, Recie [Reese.Recie@epa.gov]; Reisman, Larry [Reisman.Larry@epa.gov]; Rice, Cody [Rice.Cody@epa.gov]; Richardson, Vickie [Richardson.Vickie@epa.gov]; Ross, Philip [Ross.Philip@epa.gov]; Sadowsky, Don [Sadowsky.Don@epa.gov]; Santacroce, Jeffrey [Santacroce.Jeffrey@epa.gov]; Saxton, Dion [Saxton.Dion@epa.gov]; Scarano, Louis [Scarano.Louis@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Schmit, Ryan [schmit.ryan@epa.gov]; Schweer, Greg [Schweer.Greg@epa.gov]; Scott Selken [spselken@up.com]; Scott, Elizabeth [Scott.Elizabeth@epa.gov]; Selby-Mohamadu, Yvette [Selby-Mohamadu.Yvette@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Sheehan, Eileen [Sheehan.Eileen@epa.gov]; Sherlock, Scott [Sherlock.Scott@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Sirmons, Chandler [Sirmons.Chandler@epa.gov]; Slotnick, Sue [Slotnick.Sue@epa.gov]; Smith, David G. [Smith.DavidG@epa.gov]; Smith-Seam, Rhoda [smith-seam.rhoda@epa.gov]; Stedeford, Todd [Stedeford.Todd@epa.gov]; Strauss, Linda [Strauss.Linda@epa.gov]; Symmes, Brian [Symmes.Brian@epa.gov]; Tanner, Barbara [Tanner.Barbara@epa.gov]; Thompson, Tony [Thompson.Tony@epa.gov]; Tierney, Meghan [Tierney.Meghan@epa.gov]; Tillman, Thomas [Tillman.Thomas@epa.gov]; Tomassoni, Guy [Tomassoni.Guy@epa.gov]; Tran, Chi [Tran.Chi@epa.gov]; Turk, David [Turk.David@epa.gov]; Vendinello, Lynn [Vendinello.Lynn@epa.gov]; Wallace, Ryan [Wallace.Ryan@epa.gov]; Wheeler, Cindy [Wheeler.Cindy@epa.gov]; Widawsky, David [Widawsky.David@epa.gov]; Williams, Aresia [Williams.Aresia@epa.gov]; Williams, Bridget [Williams.Bridget@epa.gov]; Williamson, Tracy [Williamson.Tracy@epa.gov]; Wills, Jennifer [Wills.Jennifer@epa.gov]; Wise, Louise [Wise.Louise@epa.gov]; Wolf, Joel [Wolf.Joel@epa.gov]; Wright, Tracy [Wright.Tracy@epa.gov]; Yowell, John [yowell.john@epa.gov]
Subject: News Articles (For EPA Distribution Only)

BNA DAILY ENVIRONMENT REPORT ARTICLES

[New EPA Science Advisers Include Climate Skeptic, Agency Vets](#)

By Abby Smith

ED_002923A_00002121-00001

Posted Jan. 31, 2019, 4:29 PM

The EPA's panel of science advisers is getting a slate of new members, including a well-known skeptic of mainstream climate science.

Lead Paint Claim Against N.Y.C. Housing Authority to Proceed

By Peter Hayes

Posted Jan. 31, 2019, 4:23 PM

The New York City Housing Authority faces reinstated lead paint exposure claims based on a report showing a child's blood lead levels increased until the date his mother's apartment was re-painted.

New York to Spend \$2.2 Billion to Clean Up Lead Paint in Housing

By John Herzfeld

Posted Jan. 31, 2019, 4:02 PM

New York will spend \$2.2 billion to clean up lead paint and other problems in public housing as part of a new, enforceable settlement with federal housing and environmental agencies.

EPA Must Disclose Chemical Safety Studies: House Committee Chair

By Pat Rizzuto

Posted Jan. 31, 2019, 3:36 PM

The Democratic leaders of the House Committee on Energy and Commerce asked the EPA to publicly release all health and safety studies it reviewed on the risks posed by a pigment used in coatings and paints.

Court Must Fast Track Cancer Patient's Asbestos Exposure Suit

By Peter Hayes

Posted Jan. 31, 2019, 2:36 PM

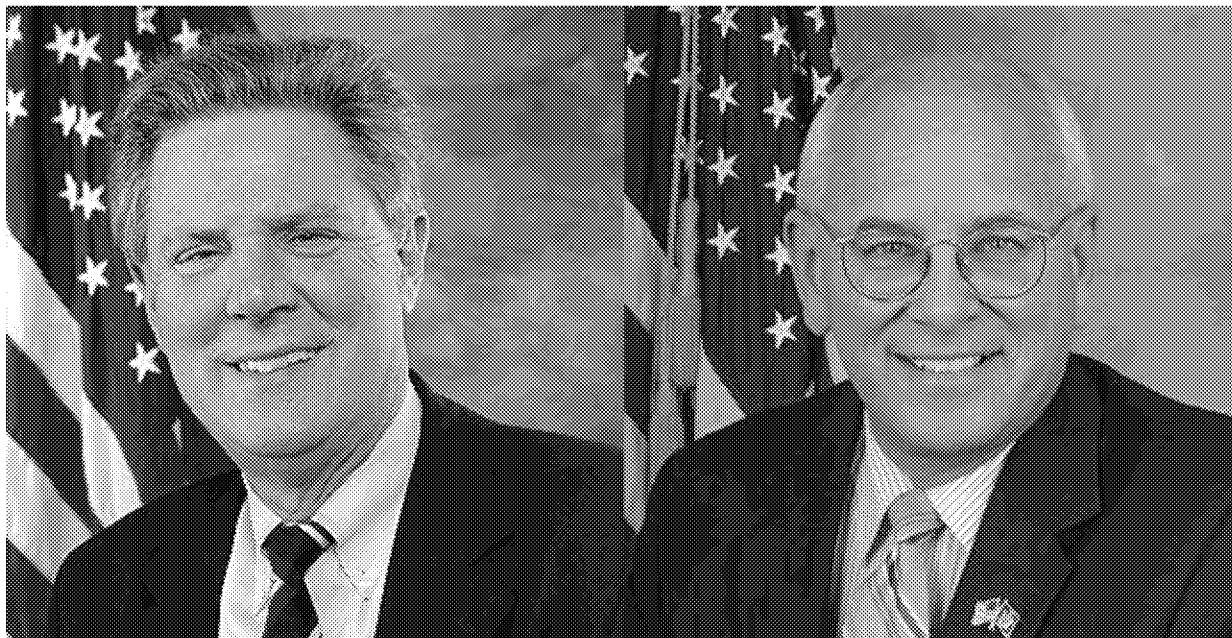
A 75-year old man with advanced and incurable cancer will get an expedited trial in his asbestos exposure lawsuit that's been pending for three years, a California appeals court ruled.

GREENWIRE ARTICLES

Lawmakers press EPA for science behind risk evaluation

Cecelia Smith-Schoenwalder, E&E News reporter

Published: Thursday, January 31, 2019



Democratic Reps. Frank Pallone of New Jersey and Paul Tonko of New York are pressing EPA to release studies on pigment violet 29. US House of Representatives/Wikipedia(Pallone); Paul D. Tonko/Facebook

Democrats on the House Energy and Commerce Committee want to see the science behind EPA's draft risk evaluation for a chemical it determined does not present a human health risk.

Chairman Frank Pallone (D-N.J.) and Environment and Climate Change Subcommittee Chairman Paul Tonko (D-N.Y.) wrote yesterday in a [letter](#) to acting EPA Administrator Andrew Wheeler that they were "deeply concerned" at the withholding of certain studies used in the draft risk evaluation for pigment violet 29.

<https://www.eenews.net/greenwire/2019/01/31/stories/1060119177>

CHEMICAL WATCH ARTICLES

Congressional Democrats turn up the heat on the EPA

31 January 2019 / TSCA, United States



As the EPA reopens after being shuttered for four weeks, Democratic legislators have wasted no time in renewing pressure on the agency.

And the focus of their scrutiny continues to fall on per- and polyfluoroalkyl substances (PFASs), after acting administrator Andrew Wheeler signalled in his recent confirmation hearing that he was unlikely to set an enforceable drinking water standard on the controversial class.

Answers sought on delayed PFAS study

This week, leaders of the House Energy and Commerce Committee reiterated a months-old request for more information on the delayed release of an Agency for Toxic Substances and Disease Registry (ATSDR) study on PFAS.

The study, ultimately released in June 2018, was the subject of significant controversy last year after internal documents surfaced suggesting that the EPA and White House were working to slow its publication.

And House Democrats – including Representatives Frank Pallone (D–New Jersey), Diana DeGette (D–Colorado) and Paul Tonko (D–New York) – said this week they are "deeply concerned that these actions appear to indicate that politics, and potentially industry interests, are being placed before public health, particularly in light of reports that EPA has decided to not set a drinking water limit for several toxic chemicals."

The lawmakers have requested that the EPA respond to its original May 2018 information requests by 12 February.

Wheeler responds to EPW

Meanwhile, the Senate Committee on Environment and Public Works (EPW) top Democrat Tom Carper (D–Delaware) highlighted the lack of action on PFASs as one of several areas of concern amplified by Mr Wheeler's responses to questions raised by the EPW during his nomination hearing.

The written answers were released to the public by Mr Carper's office this week, and address several queries related to the class of substances, including the extent to which the EPA will be evaluating state actions and the ATSDR study in its regulatory process.

Mr Wheeler described the study – which floated minimum risk levels (MRLs) for four PFAS chemicals that are lower than EPA's recommended limits for PFOA and PFOS – as "an important step in the process for establishing a national primary drinking water evaluation".

"As a part of the evaluation, the EPA will continue to carefully review the draft ATSDR toxicological profile and will consider all newly available scientific information, including the science used to develop state standards," he added.

Mr Wheeler's statements also included:

- a commitment to make public the results of a National Academy of Sciences (NAS) review of the agency's methodology for collecting information on general chemical safety, as reflected in a letter he sent to the EPW in January 2019;
- a description of how the partial government shutdown has delayed the agency's continued study of PFASs; and
- and an assurance that a final rule on methylene chloride paint strippers is in interagency review.

Nevertheless, the Democrat's concerns persist.

"I urge my colleagues to join me in urging Mr Wheeler to reverse course on these misguided proposals and restore public confidence in EPA's critical mission," Mr Carper wrote.



Lisa Martine Jenkins

Americas reporter

Related Articles

- [Temporary end to US shutdown leaves uncertainty at EPA](#)
- [PFAS management plan expected from US EPA in 'very near future'](#)
- [House Democrats question ACC role in PFAS controversy](#)
- [US ATSDR releases 'suppressed' PFAS tox profile](#)
- [White House fears PR 'nightmare' over PFAS risk level](#)
- [EPA promises changes to TSCA new chemicals transparency, CBI](#)
- [US EPA moves to finalise methylene chloride paint stripper rule](#)

Further Information:

- [Letter to Andrew Wheeler from E&C](#)
- [Statement by Andrew Wheeler to EPW](#)

Methylene chloride, NMP products remain at major US retailers

Safer Chemicals Healthy Families monitors companies' compliance with 2018 commitments

31 January 2019 / Built environment, Product testing, Retail, United States, Voluntary action



A survey of five major US retailers found that a majority of their stores were still selling methylene chloride or NMP paint strippers, despite the companies' commitments to remove those products from shelves by the end of 2018.

Major home improvement and paint retailers [Lowe's](#), [Sherwin-Williams](#), [the Home Depot](#), [Kelly-Moore](#) and [Autozone](#) made commitments to phase out the sale of paint strippers containing methylene chloride and N-methylpyrrolidone (NMP) on the back of overwhelming evidence of the substances' health hazards. These were among at least ten retailers that planned to ban the sale of the products.

However, in the first few weeks of 2019, environment and health advocates at Safer Chemicals Healthy Families visited 42 store locations in order to monitor compliance with the agreements. They found that 62% of the stores they visited were still selling either methylene chloride or NMP paint stripper products.

The stores had varying levels of non-compliance with their commitments:

- none of the 12 Lowe's stores surveyed carried products with methylene chloride, but four carried one NMP paint stripper; the company pledged to remove those products when contacted by SCHF;
- none of the seven Sherwin-Williams stores carried NMP-based products, but two stores carried methylene chloride products; a spokesperson for the retailer told SCHF that every store would be re-checked on 18 January, though the company did not respond to a request for confirmation that those checks had been carried out;
- none of the three Kelly-Moore stores visited were still selling paint strippers containing methylene chloride, but one was found to contain NMP; the company's spokesperson told SCHF that they will resend a memo to all Kelly-Moore's stores reminding them of the company's commitment to ban the products;
- all 11 of the Home Depot stores were still selling methylene chloride-based paint strippers and five of 11 also sold NMP-based products; and
- eight of nine AutoZone stores surveyed had methylene chloride products on their shelves, but none had NMP-based paint strippers.

Methylene chloride paint strippers in particular have come under fire from public health advocates because dozens of people have died as a result of using the products. Family members of the victims have joined SCHF and the Vermont Public Interest Research Group to [sue the EPA](#) for failure to enact a considered ban on the substance.

The agency issued the [original proposal](#) to ban or restrict the two solvents from paint removal applications in early 2017. According to SCHF, at least four people have died from exposure to methylene chloride [since then](#).

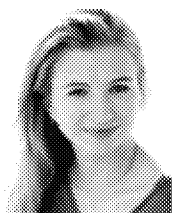
Chemical Watch approached all five retailers for comment but had not received a response at the time of publication.

SCHF plans to similarly monitor other retailers that have made the commitment, such as [Walmart](#). And it praises those who have stepped up for taking actions that are "likely saving lives" and put pressure on regulators to make these market interventions unnecessary.

"This new in-store research underscores why we need federal action and enforcement by the EPA, to ensure that no toxic paint strippers remain on store shelves," said SCHF in a statement.

Late [last month](#), the EPA submitted for interagency review a final TSCA section 6 rule to regulate methylene chloride paint strippers. But the rule will not address NMP products, and there are signals it will exclude occupational uses.

Read document in full: [SCHF survey results](#)



Lisa Martine Jenkins

Americas reporter

Related Articles

- [Lowe's to phase out methylene chloride, NMP paint removers](#)
- [Sherwin-Williams to stop selling methylene chloride paint removers](#)
- [Campaigners secure third paint stripper victory with Home Depot](#)
- [Three more US companies join methylene chloride phase out](#)
- [US EPA sued over delay to methylene chloride paint stripper restriction](#)
- [US EPA proposes prohibitions on methylene chloride, NMP](#)
- [US EPA moves to finalise methylene chloride paint stripper rule](#)
- [Walmart to phase out methylene chloride and NMP paint strippers](#)
- [US EPA moves to finalise methylene chloride paint stripper rule](#)

OECD says its chemical work saves €300m annually

EHS programme helps member governments 'optimise the use of their resources'

31 January 2019 / Data, Global



The OECD says its environmental, health and safety (EHS) programme saves member countries and industry an estimated €309m per year.

In its report, *Saving costs in chemicals management how the OECD ensures benefits to society*, the organisation says estimated savings have grown by 75% since 2010 and by 240% since 1998.

The savings are spread across industrial chemicals, biocides and pesticides (see table).

Its EHS programme helps member governments "optimise the use of their resources, reduce non-tariff barriers to trade, and save industry time and money by cooperating to test and evaluate the safety of industrial chemicals, pesticides, biocides, nanomaterials and products of modern biotechnology".

OECD countries:

- agree on overall policies;
- develop harmonised instruments for their implementation; and
- set frameworks for, and participate in, work-sharing.

Data acceptance

Much of the savings are accrued through the EHS programme's Mutual Acceptance of Data (MAD) system, which includes the Guidelines for the Testing of Chemicals and the Principles of Good Laboratory Practice (GLP).

The OECD says MAD saves the chemicals industry the expense of duplicate testing for products that are marketed in more than one country. It also provides a "common basis for cooperation among national authorities and avoids creating non-tariff barriers to trade".

In addition, since 2010 there has been an increase in the number of OECD member countries and non-member full adherents to the MAD. "This means that the reduction in duplicative testing is now spread across more countries and hence the savings are greater," it says.

The report adds the OECD's EHS Programme provides a forum for countries to exchange technical and policy information, which creates greater confidence in, and acceptance of, each other's approaches. This "ultimately fosters more efficient, effective and more closely harmonised national chemicals management programmes".

The OECD is trying to get China on the MAD programme.

In addition to financial savings, the OECD says its programme has saved 32,702 animals from being used to test industrial chemicals.

Non-quantifiable benefits

The organisation says the quantifiable savings "only tell part of the story".

The report also describes the programme's "equally important non-quantifiable benefits", such as:

- harmonised tools for testing and assessing nanomaterials, generating savings to governments and industry;
- harmonised tools to identify the risks of endocrine disruptors;
- harmonised templates for reporting information used for the risk assessment of chemicals; and
- reduced need for national government inspections of chemical test facilities in other countries.

The estimated savings, it says, are just a snapshot of the benefits that have already accrued, and this figure is expected to rise as the results of more EHS projects become available in the coming years.

Annual savings from EHS programme. Source OECD.

Savings	
From no repeat pesticide testing	EUR 206 937 500
From no repeat new industrial chemical testing	EUR 44 728 943
From no repeat biocide testing	EUR 61 250 000
From no repeat existing chemical testing	EUR 780 570
From harmonised pesticide monographs	EUR 2 218 145
From harmonised pesticide dossiers	EUR 1 951 125
Savings subtotal (rounded)	EUR 317 870 000
Costs	
Country participation in the EHS Programme	EUR 4 290 000
OECD Secretariat	EUR 4 545 000
Costs subtotal (rounded)	EUR 8 835 000
Net savings (rounded) EUR 309 035 000	
Reduction in animals needed for testing new industrial chemicals	
32 702	



Leigh Stringer

Global Business Editor

Related Articles

- [OECD wants closer ties with China on chemical safety](#)

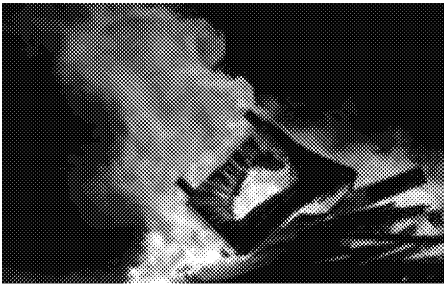
Further Information:

- [Report](#)
- [Report highlights](#)

California repeals business furniture flammability standard

State also begins allowing flame retardant-free building insulation

31 January 2019 / Built environment, Halocarbons, Standards, United States



California has repealed a flammability standard for upholstered seating used in public spaces. The move will enable the seating to meet state requirements without the use of chemical flame retardants more easily.

On 22 January the state's Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bearhfti) repealed [Technical Bulletin \(TB\) 133](#) – The Flammability Test Procedure for Seating Furniture for Use in Public Occupancies. In place since 1991, the standard had been developed to establish fire performance standards for furniture used in public settings, and included an 'open flame' test that was typically met through the use of flame retardants.

But in a statement of reason, Bearhfti said TB 133 has become "obsolete" in most areas, as it overlaps with the recently updated [TB 117-2013](#).

Furthermore, it said, the use of organohalogen flame retardants typically used to meet TB 133 "present significant health risks to consumers, as established by overwhelming scientific research.

"The combination of confusion between the standards and the added health risks to consumers shows a clear need for a change to the regulatory language."

Mixed reactions

California's move has been welcomed by furniture manufacturers and consumer safety advocates alike.

The Business and Institutional Furniture Manufacturers Association said it has urged the repeal of TB 133 for several years and that it worked with a range of groups to advance the change. "Bifma took the lead on the repeal project with presentations, cost studies, surveys, statistical reviews of fire data, and other activities that proved the repeal an appropriate decision for California," it said in a statement.

Arlene Blum, executive director of the Green Science Policy Institute, added that the move was a "win for both healthier furniture and fire safety."

But the North American Flame Retardant Alliance told Chemical Watch that repealing the open flame test would "reduce fire safety by weakening the fire performance requirements".

"Experts have long-considered upholstered furniture one of the consumer products with the greatest fire risk, while decades of experience show fire safety requirements have the greatest impact when applied to public occupancies where loss can be multiplied and more severe," said Nafra.

California allows flame-retardant free building insulation

Meanwhile, the California Building Standards Commission has updated its state building codes to allow for the use of flame retardant-free foam building insulation in below-grade applications.

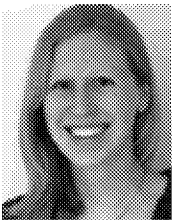
The change will permit the use of foam insulation containing no flame retardants when installed below a minimum 3.5-inch thick concrete slab on grade. Certain labelling requirements apply for such products to prevent their misuse in vertical or above-grade applications, which must continue to meet certain surface burning characteristics.

The proposal had the backing of a wide array of NGOs, architecture firms, corporations, and firefighters. But it was opposed by foam insulation groups and the American Chemistry Council (ACC), who cited concern that the proposal is unjustified and would increase fire danger.

The Office of the State Fire Marshal (OSFM), however, said in its proposal that the scope is limited to an area that "would pose the lowest fire threat", and that testing confirms it will not create a fire hazard.

The GSPI – which has been championing removing flame retardants from building insulation for a decade – said California's move represents "a beginning step towards flame retardant-free building insulation".

A similar code change proposal has been submitted to the International Code Council for consideration later this year, added the NGO.



Kelly Franklin

North America editor

Related Articles

- [California proposes change to furniture fire safety regulation](#)
- [California approves new upholstered furniture flammability standards](#)

Further Information:

- [TB 133 repeal](#)
- [Statement of reason](#)
- [Bearhfti regulatory changes](#)
- [CBSC proposal](#)
- [CBSC January 2019 proposals](#)
- [CBSC statement of reason](#)
- [GSPI blog](#)

Echa round-up

Targeted public consultation

Echa has begun a targeted public consultation on additional information provided for a proposal for harmonised classification and labelling on 1-isopropyl-4-methylbenzene. In this the lead registrant has indicated the availability of an unpublished acute toxicity study in *Daphnia magna* that could change the classification proposal.

A public consultation is open until 11 February 2019.

CLH proposals and intentions

Echa has received proposals to harmonise the classification and labelling for:

- N,N-dimethyl-p-toluidine. Germany is proposing harmonised classifications of acute toxicity 3 and 4, carcinogenicity 2, and Stot RE 2. And specific concentration limits of Oral: ATE = 139 mg/kg bw Inhalation: ATE = 1,4 mg/L (mists); and
- 6-[C12-18-alkyl-(branched, unsaturated)-2,5-dioxopyrrolidin-1-yl]hexanoic acid. Austria is proposing a harmonised classification of reproductive toxicity 1B, H360FD.

It has also received a new intention for:

- 2-ethyl-2-[[1-(1-oxoallyl)oxy]methyl]-1,3-propanediyl diacrylate. France is proposing harmonised classifications of carcinogenicity 2, aquatic acute 1, M-factor=1 and aquatic chronic 1, M-factor=1.

Testing proposals

And the agency has invited third parties to submit scientifically valid information and studies on five testing proposals on the following four substances:

- 1,3,2-dioxathiolane 2,2-dioxide
- N-(3-aminopropyl)-N'-C16-18 (evennumbered), C18 unsaturated alkyl -propane-1,3-diamine
- reaction mass of N,N,N',N'-tetrabutylmethylenediamine and dibutylamine
- reaction products of acrylic acid with 2,2'-[oxybis(methylene)]bis[2-ethylpropane-1,3-diol]

The deadline for submitting information is 11 March.

Board of Appeal announcements

The BoA has published announcements of two new appeals related to data-sharing disputes:

- in case A-024-2018, the appellant Symrise AG, Holzminden is the lead registrant of the substance 3-phenylpropan-1-ol; and
- in case A-023-2018, the appellant Oxiteno Europe SPRL is lead registrant of the substance isopenyl acetate.

In both, the appellants are asking for the decision to be annulled in which Echa decided they had failed to make every effort to reach an agreement with the claimant, another registrant of the substance, over data-sharing.

Guidance

Echa has released a guide on how to act during dossier evaluations. The document explains how dossiers are processed and how registrants should act after receiving the draft or adopted decision.

It also highlights [changes](#) that have come in since 1 January. These have meant that dossier decisions are sent to all non-compliant registrants of a substance.

The agency has also released a guide on how to report changes in identity under the REACH and CLP Regulations. This latest document replaces 'Practical guide 8: How to report changes in identity of legal entities'.

The latest guide is available in English, with translations are expected at a later date.

EUON

The EU observatory for nanomaterials is seeking topic suggestions for future studies on nanomaterials. EUON conducts at least three studies a year to address knowledge gaps that are of interest to the general public and the research community.

It is looking for studies that address:

- questions relating to the health and safety of nanomaterials, including hazard and risk assessment, exposure or worker safety and protection;
- specific issues surrounding consumer or worker uses.
- markets for nanomaterials, focusing on those in the EU.

The scope can be on nanomaterials in general, a specific nanomaterial, or a defined group and it should be possible to execute within three to nine months.

The studies should be based on desk research and surveys and not require experimental facilities, for example for conducting animal or other laboratory studies, it says.

The outcome and study reports will be made publicly available on the EUON website.

If a topic is selected, the proposer may be contacted for further information. The deadline for proposals is 7 February.

And the agency is also seeking feedback, via a short questionnaire, on how its European Observatory for Nanomaterials (EUON) is performing and could be improved to better meet the needs of users.

The resource provides information on nanomaterials, on a range of subjects from safety to innovation to a wide audience. It covers existing EU legislation and the presence and uses of specific substances on the EU market.

Seac draft opinion reminder

The agency has issued a reminder that it wants comments on the draft opinion released by its Socio-economic Analysis committee(Seac) on the proposed restriction of hazardous substances in tattoo inks and permanent make-up.

Echa prepared the [proposal](#) along with Denmark, Italy and Norway.

The deadline for comments is 11 February 2019.

Related Articles

- [Major revamp of REACH dossier compliance processes announced](#)

- [Echa's committees unable to conclude on tattoo derogations](#)

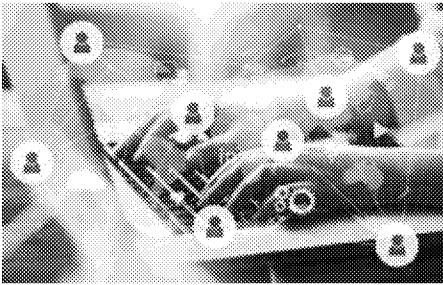
Further Information:

- [Targeted public consultation](#)
- [Registry of CLH intentions until outcome](#)
- [Registry of intentions](#)
- [Testing proposals](#)
- [Appeal announcements](#)
- [Dossier evaluation guidance](#)
- [Changes in identity guidance](#)
- [EUON](#)
- [EUON survey](#)
- [Seac reminder](#)

EU drafting Implementing Regulation for new substances registration

Commission considering a second for dossiers

31 January 2019 / Europe, REACH, Substance registration



The European Commission is preparing an Implementing Regulation under REACH to spell out registration procedures for new substances on the market, Commission sources have told Chemical Watch. And another may be on the way to toughen up the requirements for dossier updates.

It is intended that the first Implementing Regulation, still in draft form, will explain how REACH registration provisions will operate following the [expiry](#) in June 2018 of the transitional regime that applied to 'phase-in' substances. These are chemicals that were already on the market when REACH was adopted in 2007.

Echa has received dossiers for 21,551 phase-in chemicals and believes the majority of the substances currently used on the market have been registered, even as NGOs say there may be thousands of [unregistered](#) chemicals.

The Commission said the new Implementing Regulation would aim to provide clarifications regarding:

- calculation of tonnage in registering substances;

- applicability of reduced REACH registration requirements; and
- continuing obligations of existing registrants of phase-in substances to jointly update their registration dossiers after 1 June 2018.

No further details have yet been revealed, but the draft Regulation is currently going through the Commission's "internal procedures and obligations" and member states will vote on it in the context of the REACH Committee.

"The Commission's intention is that the vote will take place in the first quarter of 2019," a source said.

Article 22

The Commission is also considering drafting another Implementing Regulation to boost the frequency at which registration dossiers are updated, amid concerns over high levels of non-compliance in REACH dossiers.

Some EU member states and Norway have called for an implementing Act to clarify Article 22 of REACH, to ensure companies regularly review and update dossiers. The Commission's second REACH review called for actions to encourage dossier updates and, last September, Echa announced a major revamp of compliance processes.

The EU executive is mulling "what options are available", the Commission said, and they include an implementing act that would provide "further detail regarding the timing and circumstances in which dossiers need to be updated".

It will also propose amending Echa's compliance target, currently set at 5% of dossiers registered under each tonnage band. The new target should be "a further incentive" for companies to comply with registration duties, the Commission said. It did not disclose the new target.

Echa is already using "intelligent strategies" to prioritise compliance checks, it added, but it could also consider "amending or adding new criteria" for prioritisation "to achieve the highest impact with dossier evaluation."

A German study last year found registration dossiers to be non-compliant for some 32% of substances at 1,000 tonnes per year or above. Echa's seventh enforcement project (Ref-7) started in January and will focus on dossier compliance.

Cefic said it would welcome a draft Implementing Regulation on Article 22 as it would provide more clarity "on what needs to be updated in dossiers and when."

The clarification will be helpful for everyone, Cefic said, "for authorities to better assess whether a dossier needs to be updated or not and for registrants to proactively update their entries, if needed."



Clelia Oziel

EMA correspondent

Related Articles

- More than 21,000 substances registered under REACH

- [Echa's 2018 REACH registration numbers get mixed reception](#)
- [EU states call for REACH dossier update Regulation](#)
- [EU publishes delayed second REACH Review](#)
- [Major revamp of REACH dossier compliance processes announced](#)
- [REACH registration project finds low compliance rates](#)
- [Echa: 'Army' of inspectors to probe REACH registrations](#)

Nestlé releases 'negative list' of plastic packaging materials

31 January 2019 / Food & drink, Switzerland, United States, Voluntary action

Nestlé has identified a number of plastic materials it will not use in its product packaging because it says they are difficult to recycle.

The "Negative List" was announced earlier this month. Nestlé intends to phase out the substances' use in existing packaging, and has also placed a ban on their use in new packaging.

The excluded substances include:

- polyvinyl chloride (PVC);
- polyvinylidene chloride (PVDC);
- polystyrene (PS);
- expanded polystyrene (ePS);
- regenerated cellulose; and
- non-recyclable plastics/paper combinations.

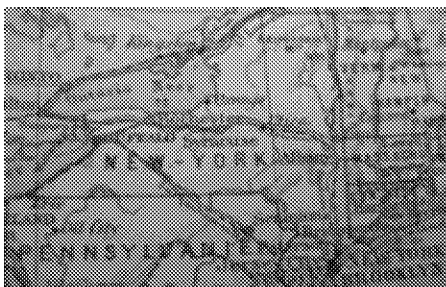
Further Information:

- [Nestlé 'negative list'](#)

New York governor announces proposal to expand ingredient disclosure

Andrew Cuomo floats 'Consumer Right to Know Act'

31 January 2019 / Confidentiality & right-to-know, United States



New York governor Andrew Cuomo has announced a proposal to require on-package labelling and increased ingredient disclosure for consumer products.

The concept, announced as part of his executive budget proposal, would authorise the state's Department of Environmental Conservation to require labelling for certain consumer products, and expand existing cleaning product ingredient disclosure requirements to personal care products.

"There are 1,000 known carcinogens that are in products that are used every day," the governor said. "We want to pass a Consumer Right to Know Act that labels those products that have those carcinogens".

Consumer product labelling

Details of the draft legislation, outlined in the governor's 2020 executive budget legislation package, call for granting the state's environmental department the authority to establish a consumer product labelling standard to inform consumers of products containing "any carcinogen, mutagen, endocrine disruptor or other chemicals of concerns identified by the department".

This could extend to children's products, cleaners and any other product that could expose a user to a concerning substance through normal use.

The proposal also calls for reporting requirements and the development of a public education programme, which could include a requirement for retailers to post information for consumers' benefit.

Personal care products

A separate article in the draft legislation takes specific aim at personal care products.

Existing federal laws that require ingredient disclosure for these, it says, "fail to adequately educate and protect consumers". The proposal therefore calls for such products to more fully disclose ingredients and to indicate those identified as a chemical of concern on one or more lists.

This, it says, would "benefit consumers, encourage manufacturers to remove potentially harmful chemicals from their products, and encourage development of innovative methods, including green chemistry, to replace these ingredients with more environmentally preferable alternatives".

More specifically, the draft calls for manufacturers to post to their websites and disclose to the state a list of ingredients by weight, as well as relevant health and safety information.

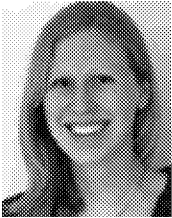
And it stipulates that such information would need to be furnished biennially, as well as:

- prior to the sale of any new personal care product;
- when the formulation of a currently reported product is changed such that the predominance of the ingredients is changed; or

- when any referenced chemical of concern list is updated to include an ingredient present in a product.

"The more we know about our exposure to chemicals, the more frightening the situation is," Governor Cuomo said. "Consumers have the right to know what is in the products they use, and requiring labelling on designated products will provide consumers with the information they deserve."

The governor's office could not be reached by press time for details as to how it plans to advance the legislation.



Kelly Franklin

North America editor

Related Articles

- [New York state delays enforcement of cleaning products disclosure](#)

Further Information:

- [Cuomo announcement](#)
- [NY 2020 executive budget](#)

NGO Platform: The hidden hazards of chemicals in plastics

Global Business Briefing, February 2019 / Global, Phthalates

Dr Anna Watson, CHEM Trust head of advocacy, describes how scientists at the Food Packaging Forum established a comprehensive database of chemicals used in the production of plastic packaging



When I buy fruit and vegetables at my nearest supermarket, I can no longer buy loose mushrooms, onions, apples or potatoes. They all come wrapped in plastic – a close-to-home reminder about how the use of plastic packaging is increasing in our daily lives. Of the 380m tonnes of plastics produced worldwide each year, more than 40% are used in packaging, with the majority of that used in food packaging.

Plastic packaging does not just cause environmental problems with its use of resources, litter and degradation to smaller particles; it is a source of chemical exposure to consumers and workers.

The chemicals used in packaging can migrate into foods and the environment during manufacturing, use, disposal and recycling. It is therefore vital for us to know what chemicals are present in plastic packaging and what the associated risks are, so that we can restrict chemicals that cause harm and replace them with safer alternatives.

Plastic packaging database

Since the summer of 2017, CHEM Trust has been part of a collaboration of NGOs, including the Food Packaging Forum, ChemSec and academic scientists, to:

- identify which hazardous chemicals are used in the manufacturing of plastic packaging and in the end product;
- compile information on their applications and toxicity; and
- identify which substances should be prioritised to be substituted for safer alternatives.

However, it has not been straightforward to determine which chemicals are used in the production of plastic packaging, as there is no single registry for this information. Scientists at the [Food Packaging Forum](#) started by trawling through data to establish a comprehensive database.

The scientists faced considerable barriers when building the database due to a lack of information concerning the use of chemicals in plastics manufacturing and the chemicals' function and presence in final products.

This was often caused by information not being publicly accessible through standard search methods or not being accessible at all. In addition, plastic packaging contains impurities, degradation products, and contaminants which cannot be exhaustively compiled because many of these chemicals are not yet identified.

The chemicals associated with plastics packaging database (CPPdb), containing 4,283 substances, was the result of this extensive study. Information on their toxicity and uses in plastic packaging, as well as additional regulatory information such as authorisation for use in food packaging is also included. The 906 substances which are most likely to be associated with plastic packaging have been published on the Data Commons website.

Hazardous chemicals and prioritisation

At least 148 of the 906 chemicals most likely to be associated with plastic packaging were identified as particularly hazardous both to human health and the environment based on several harmonised hazard data sources. Sixty-eight chemicals were identified as particularly hazardous to the environment and 63 chemicals were identified as particularly hazardous for human health.

The next step in the project was to identify which chemicals in plastic packaging should be a priority for the industry to find alternatives.

To achieve this prioritisation, a set of criteria was agreed, combined with the expert judgment of the project partners. It is worth noting that different prioritisation processes will have different outcomes and the result is strongly dependent on the available information.

All the chemicals identified following the prioritisation criteria were ortho-phthalates. Benzyl butyl phthalate (BBP) was selected as the highest-priority substance for environmental hazards in the context of this research project. Five phthalates, including BBP, were selected as the highest priority substances for human health.

The others were: dibutyl phthalate (DBP); diisobutyl phthalate (DiBP); bis(2-ethylhexyl) phthalate (DEHP) and dicyclohexyl phthalate (DCHP).

Ortho-phthalates

All of the prioritised ortho-phthalates in the study are used as plasticisers, adhesives or printing inks in plastic packaging. In Western Europe, we produce about 1m tonnes of phthalates each year, of which approximately 900,000 tonnes are used to plasticise PVC. And, according to the industry, a large proportion of this PVC is used to make rigid and flexible films for packaging.

Phthalates are a well-known problematic group of chemicals for human health, which is why some of the uses of certain phthalates in toys and other children's products are partly restricted in the EU.

The EU has also decided to restrict the use of four of the ortho-phthalates prioritised in our project: DEHP, DBP, BBP and DiBP. Their use in many consumer products will be restricted, due to their toxic effect on reproductive health and the endocrine system. This partial ban takes into account the cumulative effects of combined exposure to the four phthalates. This as a welcome and long overdue measure.

However, the restriction does not prevent these chemicals being used in food contact materials such as conveyor belts and pipes used during food production, plastic gloves worn to handle food, and containers and wrappings used for food packaging. This is a glaring loophole and it must be closed as soon as possible.

Restrictions are also being discussed in the US. Since 2016, the US Food and Drug Administration has been reviewing a petition by public interest organisations to remove approval of 30 phthalates in food contact materials. However, on 14 November 2018 the FDA said it was also considering a petition from an industry group, Flexible Vinyl Alliance, claiming that only four phthalates (DEHP, DCHP, diisononyl phthalate and diisodecyl phthalate) are used in contact with food, including final packaging.

The petition requests that the agency de-authorise the remaining 26 phthalates because their use as food contact substances has been abandoned.

What should the industry do?

What do the findings of this project mean for industry and regulators? First, the project has exposed how difficult it is to get hold of chemical-use information. We need far more transparency from the industry on the chemicals they are using to produce plastic packaging.

Second, industry must move away from using groups of known hazardous substances such as the phthalates; other research by CHEM Trust has highlighted that bisphenols are a similar problem group. By regulating one chemical at a time the regulators allow the industry to move from one problematic chemical to the next within a group, rather than solving the problem.

We know that the industry can rise to this challenge. In March 2018, food brands in the US, such as Nestlé, and food packaging supply chain companies published the Food Packaging Product Stewardship Considerations. It contains a list of chemicals that these companies do not want to see in their packaging. Ortho-phthalates, including the ones our project has identified, are at the top of the list.

Third, our project identified more than 4,000 chemicals that are likely to be associated with the manufacture of plastic packaging. However, there will be many more chemicals present than we can identify – the so-called non-intentionally added substances (Nias). Not only have most of these chemicals not been identified, they have generally not been risk assessed. We simply cannot say that any plastic packaging is safe without this information.

Ultimately, in order to address the Nias issue, the industry must use fewer chemicals and ensure production processes are controlled in such a way that Nias are identified and appropriately assessed for their health and environmental impacts.



Dr Anna Watson

[View transparency statement](#)

Further Information:

- [Data Commons Website](#)

REACH & CLP Hub: Keeping up with REACH

Global Business Briefing, February 2019 / Cosmetic products Regulation, Europe, REACH

Dr Friederike Danneberg of Dr Knoell, based in Mannheim, Germany, discusses the key points producers, importers and suppliers of articles need to know about SVHCs and finished goods



Six new substances were added to Echa's SVHC candidate [list](#) on 15 January, reminding us that REACH is not only about chemicals and mixtures but also applies to articles (finished goods).

While this fact has mainly interested NGOs in the past, obligations concerning articles under REACH are becoming more widely known.

Article producers, importers and suppliers are confronted with numerous questionnaires from customers and compliance statements by their suppliers. National authorities increasing enforcement activities on chemicals in articles have certainly contributed to this development. An example of such work is the enforcement project REACH-En-Force-4 (Ref-4) whose main focus is restrictions on substances in articles.

SVHC obligations

Although attention to articles has grown under REACH, knowledge of the actual obligations under the legislation is lacking. What does the presence of a SVHC in an article mean for a company?

'Although attention to articles has grown under REACH, knowledge about the actual obligations under the legislation is lacking,' Dr Friederike Danneberg, Dr Knoell

First, companies need to know whether the concentration of the substance is above 0.1%. This not only applies to a final article but – in the case of complex articles – to every single part of it.

If the concentration is above the threshold value, information about the presence of this substance and on the safe use of the article has to be communicated down the supply chain (REACH, Article 33).

If the total amount of the SVHC contained in the products exceeds one tonne per year, article producers and importers must notify Echa (Article 7(2)). As long as all obligations concerning SVHCs are fulfilled, marketability is not affected. However, as the use of the substance may become subject to authorisation in the future, it might be a good idea for companies to look for possible substitutions.

Restrictions and authorisation obligations

While SVHCs are usually part of compliance questionnaires and statements, other obligations concerning articles are often overlooked. Producers of articles should be aware that 43 of the 197 SVHCs on the candidate list are subject to authorisation and cannot be used (for example, incorporated into an article) without this, after the sunset date.

Article importers are free from this requirement as they do not "use" the substance. However, they, too, should be aware of another key part of REACH: restrictions.

Annex XVII of REACH restricts the use and presence of hundreds of substances, as many entries cover whole groups of these. Some of the restrictions only apply to substances and mixtures but many are also valid for articles – sometimes articles in general, sometimes only specific product groups like jewellery.

Phthalates: closing the loopholes

Echa is using all of the above-mentioned obligations to close loopholes concerning groups of substances, such as DEHP, DBP and BBP, three phthalates previously used widely as plasticisers.

On the candidate list from the very beginning of REACH, they have been subject to SVHC requirements since 2008. They are also listed in REACH Annex XIV and subject to authorisation.

These measures did not prevent imported articles containing DEHP, DBP and BBP from flooding the European market, so a restriction for toys and childcare articles was introduced (entry 51 of Annex XVII).

This has been expanded to articles in general, with only a few exemptions. An additional restriction that includes DIBP will be effective from July 2020.

'Companies should start looking for alternatives as soon as they become aware of the presence of an SVHC in one of their articles,' Dr Friederike Danneberg, Dr Knoell

This example shows that the addition of a substance to the candidate list is often only the first step – so companies should start looking for alternatives as soon as they become aware of the presence of an SVHC in one of their articles. This will also help to prevent losing customers that shy away from products containing them.

Know your articles

In spite of pressure from Echa to phase out the three phthalates, many noncompliant products are being marketed and may end up on the EU's Rapid Alert System for dangerous products (Rapex) list if authorities find them.

While some companies may import these products knowingly, others simply do not know their products well enough. Knowing the exact composition of an article is, of course, the easiest way to keep up with the twice yearly additions to the candidate list, or new restrictions that can be added to Annex XVII at any time.

Full material knowledge is difficult for producers of complex articles with parts coming from various suppliers and almost impossible for importers of articles, however.

For those companies, active communication up the supply chain, agreements with suppliers and – when there is no other option – testing for certain SVHCs is critical, because they are liable for fulfilling their obligations under REACH.

And it is not only REACH that regulates the use of chemicals in articles. Suppliers should have their eyes on Regulation (EC) 850/2004 on persistent organic pollutants (POPs) and know other regulations that apply to their product types, for example, the RoHS Directive for electrical and electronic equipment (EEE).

Lead: false friends

Compliance with regulations and directives is difficult and most often a laborious process. In addition, lack of knowledge on obligations can lead to a false feeling of security.

This may be the case for many suppliers of electrical and electronic devices. As their products already have to comply with the RoHS Directive 2011/65/EU which prohibits – alongside other substances – the use of lead, many might have ignored the addition of lead to Echa's candidate list in June last year, assuming their products do not contain it.

This assumption may be incorrect, however. The RoHS Directive has a huge number of exemptions for the use of lead and these are used for a great number of products. Thus, importers and retailers of EEE in particular should make sure they are informed of the presence of lead in articles by their suppliers.

Ecolabels: staying one step ahead

One option, not only to keep track with regulatory changes but to stay a step ahead, is to apply for an ecolabel and ensure products meet their requirements.

There are various ecolabels for numerous types of articles. In the EU, the most well-known are probably the EU Ecolabel, the Nordic Swan and the Blue Angel or – for textile articles – the STANDARD 100 by OEKO-TEX®.

These not only require compliance with existing legislation but prohibit the use of chemicals that, due to their hazardous

properties, are likely to become subject to regulatory obligations in the future, thereby focusing on substances relevant to the specific product group.

To carry the label, SVHCs are usually prohibited above a concentration of 0.1%. Companies adhering to their criteria are likely to be, therefore, less easily caught out by new restrictions on chemicals.

Conclusion

Ensuring that articles comply with relevant chemical regulation like REACH is an ongoing process. Complicated supply chains, insufficient information and overlapping legislation are only three of the problems producers, importers and suppliers of articles may face.

Solutions are easy to discuss but harder to achieve. They include staying up to date on regulatory changes, keeping informed about chemical substances in your supply chain, and trying to stay ahead of new developments – for example, by meeting requirements for an ecolabel.

Phasing out critical substances will not only help fulfil legal obligations, it will also strengthen your customer's trust in the brand.



Dr Friederike Danneberg

Dr Knoell Consult

Related Articles

- [Six SVHCs added to REACH candidate list](#)
- [Echa outlines activities to promote SVHC substitution](#)

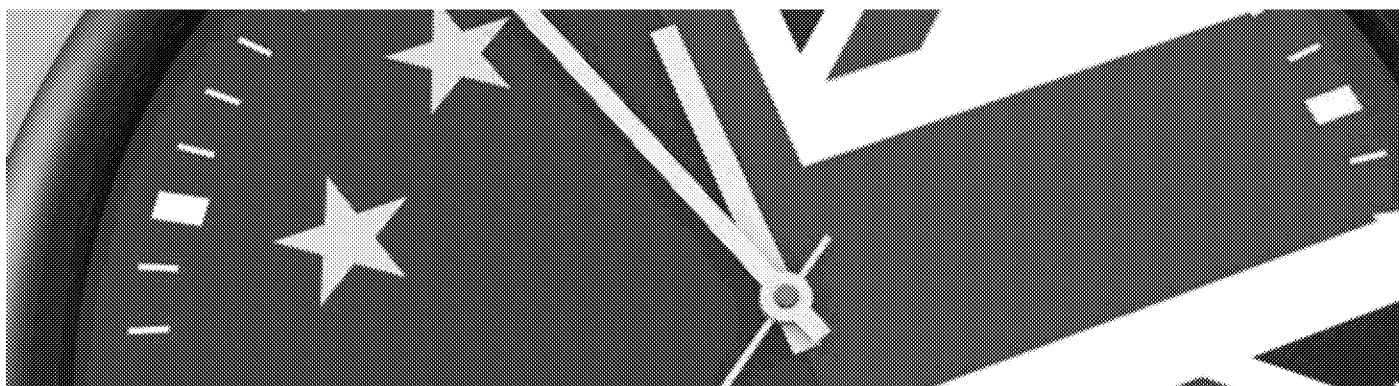
Further Information:

- [Echa candidate list](#)
- [Echa's list of 96 substances to evaluate in 2019-2021](#)
- [REACH legislation](#)

Guest Column: Will Brexit return control to the UK chemical sector?

Global Business Briefing, February 2019 / Chemical manufacturing, Data, Europe, REACH

John Hibbs, business development manager at Belgium-based Solvay and chair of the British Association for Chemical Specialities (Bacs), discusses Bacs' concerns for a no-deal Brexit, data sharing and the future of EU-UK trade post 29 March



The Bacs position is that we fully recognise the need for an effective chemicals management system for the UK. And we welcomed the 'cut and paste' approach to this because it is potentially the least disruptive way to establish a national regulation. We know that the majority of our members have supply chains that cross international borders, mainly with the EU. Replicating REACH in the UK means less work and therefore a more efficient and cost-effective compliance effort.

Where the current proposals create issues is the request to provide a "full data package" within two years of leaving the EU.

For the original EU REACH registration, registrants did not submit a full data set, but purchased a letter of access which entitled them to use data owned by third parties, to support their registration.

Defra [the UK Department for Environment, Food and Rural Affairs] knows that this data exists, and has been a part of the process of collecting and evaluating it. Data summaries and the outcomes of these evaluations are freely available.

The reasoning for asking for full data submission is far from satisfactory. It has ranged from "a legal requirement" – please show us the legal arguments – to "we are transferring the principle of no data, no market" from EU-REACH. The data exists, and the industry classifies and manages its substances according to that already submitted, so this seems a weak argument.

Defra's 'cake and eating it' policy

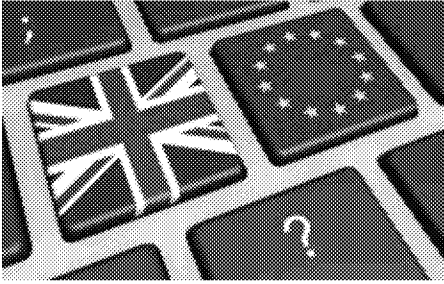
We are also seeing suggestions that UK-REACH would waive this 'legal necessity' where providing data would involve animal testing. Abhorrent as it may be, animal data is still the only data regulators will accept for more complex endpoints – which often relate directly to human health and environmental impacts.

It has been suggested that Defra would not ask for new data to be generated, if a UK registrant is unable to access the original data used for REACH. How is this consistent with a legal necessity to hold data? This could be seen as a 'having your cake and eating it' policy.

Bacs has no objection to dual submission for new registrations, assuming that the data requirements stay reasonably aligned. The burden in terms of work and cost for UK industry to resubmit data for existing registrations seems totally disproportionate to the benefits (which are zero to industry, and very poorly defined for the regulators!).

We see that incurring additional costs (which we have estimated as averaging £70,000 per substance, per company), plus the resource demands will further reduce the competitiveness of UK chemical businesses, at a time when they will

already face the disadvantage of extra duties on raw materials and export sales. We expect that the costs involved could make some substances commercially unviable for the UK market.



One-sided proposals

We have also expressed strong concerns about the one-sided nature of the proposals. The UK government is making it easy for EU companies to continue to sell into the UK after Brexit. Current guidelines would give an EU-based company 180 days to complete an only representative (OR) registration. Alternatively, they can provide limited data to their UK customers (who would notify their use), which would give at least two years of cost-free access to the UK market. No reciprocal arrangement has been made with the EU. And in the event of an exit without a deal, trade from the UK into the EU in chemicals and chemical products would stop overnight.

‘In the event of an exit without a deal, trade from the UK into the EU in chemicals and chemical products would stop overnight,’ John Hibbs, Bacs' chair

Bacs is also concerned by the logistics of the proposal. EU-REACH was implemented over a 12-year period – from the adoption of the Regulation in 2007 to the completion of the registration phase-in last year.

UK-REACH suggests that a task, similar in scale and complexity, can be accomplished in two years on a completely unproven IT system. The UK scheme places a high reliance on downstream users becoming importers, and therefore registrants.

From discussions with Bacs members, ‘formulator’ companies have neither the skills nor the resource to undertake the additional duties – they range from small businesses importing and reselling gardening chemicals, which have no regulatory resource, to large consumer goods companies which become responsible for their portfolio of 1,000 substances. The numbers just don’t add up.

A no-deal UK-REACH

In all of our dealings with government and regulators, discussions on the hard practicalities of UK-REACH have tended to emphasise that this is a fall-back scenario in the unlikely even of a no-deal exit, and that government is fully committed to maintaining access to Echa membership. As a result, companies have taken very few steps towards the implementation of UK-REACH. We note that recent guidance has removed the word "unlikely".

A key frustration for all trade associations is the extreme uncertainty about what happens after 29 March. If we have a transitional period, then there will be at least two years of relative stability in which to plan and make changes. In a no-deal scenario, then major changes need to happen very quickly at substantial cost.

‘To have put concrete steps in place for a no-deal would have been a pure gamble, and potentially a very expensive one,’ John Hibbs, Bacs' chair

Bacs has been unable to give any clear guidance to its members, other than understanding their supply chain and considering what impact a no-deal exit could have. To have taken concrete steps for the eventuality of a no-deal would have been a gamble, and potentially a very expensive one.

Post-29 March worries

My greatest concern is the possibility of a no-deal, bringing the potential loss of EU-REACH registration (and therefore access to the EU market) for UK exporters. The chemicals sector is the UK's second-largest generator of export revenue, with the EU its biggest export market.

The current proposals give no credible mechanism for that trade to continue without major disruption in the event of no-deal. EU companies will continue to sell into the UK without regulatory barriers, while UK companies are potentially unable to sell into the EU until new registrations are in place.

Taking back control? It seems not.

The views expressed in this article are those of the expert author and are not necessarily shared by Chemical Watch.



John Hibbs

[View transparency statement](#)

Related Articles

- [Feature: Chemical sector struggles with Brexit's UK-REACH data 'nightmare'](#)
- [No-deal Brexit: industry alliance warns of £1bn REACH data cost](#)
- [UK government publishes no-deal Brexit REACH notice](#)
- [UK releases additional no-deal Brexit REACH guidance](#)

Further Information:

- [UK Draft Agreement on withdrawal from the EU](#)

Feature: Chemical sector struggles with Brexit's UK-REACH data 'nightmare'

Global Business Briefing, February 2019 / Data, Europe, REACH

British politicians 'confused' over data-sharing principles ten weeks before UK Brexit



The prospect of a no-deal Brexit is creating turmoil for chemical companies who must decide whether to spend millions buying rights for UK-REACH data they might not need, or wait for an EU exit deal that may never materialise.

If Britain leaves the EU without an agreement, companies operating in the UK will need to register under a new UK-REACH system at a cost, on average, of about £70,000 per substance, per company, the British Association for Chemical Specialities (Bacs) estimates. The total bill could rise to £1bn (€1.13bn).

Conversely, should the UK sign a deal, chemical companies may not have to pay anything at all if Britain can negotiate a data-sharing agreement with Echa.

'The biggest legal nightmare flows from the prevailing uncertainty about whether there will be a deal or no-deal outcome, two very different outcomes which makes it harder for companies to decide how best to react,' says Pinsent Masons lawyer Guy Lougher

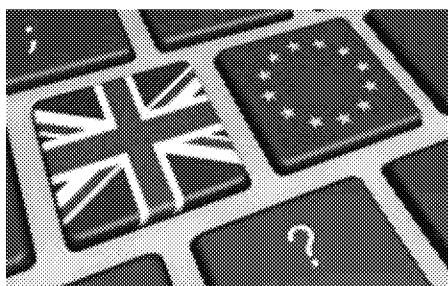
"The biggest legal nightmare flows from the prevailing uncertainty about whether there will be a deal or no-deal outcome, two very different outcomes which makes it harder for companies to decide how best to react," says Pinsent Masons lawyer Guy Lougher.

As a minimum, lawyers are telling clients to review their rights to access data required for UK-REACH, analyse the supply chain and assess their needs. Some companies may want to set up a company in continental Europe, while others will need to negotiate data-sharing agreements for the UK, but there is no one-size-fits-all solution.

"The frustrations are coming through loud and clear and some of the language is getting rather choice," says Peter Newport, chief executive of the Chemical Business Association (CBA).

"I've known normally sanguine and measured people getting very hot under the collar ... They cannot plan a way out of it without potentially wasting large sums of money doing preparatory work that might suddenly become totally unnecessary."

The UK's Health and Safety Executive has offered guidance for companies and Echa will expand on its advice in the coming weeks (see box below) but the situation is changing rapidly.



Bubbling disputes

With only ten weeks to go, all eyes are on Prime Minister Theresa May and the UK parliament this week. Tuesday's 'meaningful' vote is expected to determine whether or not MPs support Mrs May's Brexit deal, which outlines the terms of Britain's EU exit and a declaration on the outline of future UK-EU relations.

In the event of a deal, chemical companies can defer data decisions during the two-year transitional stage while Britain seeks to maintain an associated membership of Echa, which oversees the registration of European chemical data.

"Companies won't have to do anything at first, but they will need to keep it [data decisions] in mind because as we approach the end of the transitional period we could still be facing a no-deal scenario," says Anita Lloyd of law firm Squire Patton Boggs.

If Britain fails to either approve a deal, revoke Article 50 or come to another arrangement by 29 March, chemical companies doing business in the UK will have to provide initial information on substances for a new UK-REACH regime within 60 or 180 days, depending on their circumstances, and the full data package within two years of Britain leaving the EU.

Cefic expects REACH compliance problems in a no-deal scenario to hit all sectors, up and downstream, and all companies having businesses in the EU-27 and the UK: "There is a high risk that value chains will be disrupted," Cefic said in a statement.

"The time periods foreseen in UK-REACH to receive a full registration are challenging for UK-based producers and importers and even more so for non-UK based suppliers, who have to rely on only representatives [ORs] or the respective importers into the UK for registration purposes," the chemical industry association said.

While the UK government is keeping time frames for UK-REACH registration under review, the more pressing problem for many companies is that they don't own full datasets about their substances and acquiring legal rights is not straightforward.

Negotiating the minefield

EU-REACH is based on a joint registration for one substance, so many entities purchased a letter of access to data, entitling them to use data owned by third parties to support their registration. The arrangement allows them to avoid unnecessary animal testing.

The access letters don't automatically confer rights on companies who might need to register chemical data for a UK-REACH system under a no-deal scenario, however. Entities need to do an audit, if they haven't already, to determine what their data-sharing agreements allow, lawyers say.

BASF, the world's largest chemical producer, headquartered in Germany, says its biggest data concern is about gaining access to data for UK-REACH registrations that it does not already hold.

"Our experience shows that data-sharing negotiations can be lengthy and it is BASF's preference to obtain access to existing data rather than repeating studies, especially animal studies," Neil Hollis, BASF's UK REACH coordinator, told Chemical Watch.

"Considering that EU-REACH registration dossiers regularly contain data possessed by multiple data owners, it's not even a case that for each substance you are only negotiating with one data owner," Mr Hollis says.

BASF has conducted a supply-chain analysis and says it is aware that to maintain access to UK markets, companies will choose to register substances in the UK they did not previously register under EU-REACH.

"These companies will be challenged without experience or knowledge in working in these particular EU-REACH SIEFs and joint registrations. Simply finding who are the data owners of these substances may be a time-consuming task," Mr Hollis says.

Company options

Some UK businesses have started registering companies in the EU, identifying ORs or looking to their EU importers to become the EU registration holder as an importer. None of it is easy.

"In Germany, for example, if you want to set up a company, you often have to have a minimum level of capital. You would have to think about what would be the language of operating and the language of documentation," says Ms Lloyd, who is director of Squire Patton Boggs' environmental, safety and health group.

"A lot of companies are looking at either Ireland or the Netherlands as being, perhaps, the most straightforward places for a company," she adds. "It is not as simple as setting up a shell company or a post box."

Some of the more proactive businesses are assessing their data rights and planning a strategy both for obtaining access to required data, or evaluating whether there is financial benefit in the data within their ownership, says Simon Tilling of Burges Salmon law firm.

"I can see the potential for lots of challenges over access rights to data within the far too short two-year period for submitting dossiers. There is a real potential for a mess that will take far longer than two years to sort out," Mr Tilling adds.

'Project Fear'

The CBA's Peter Newport is not aware of any members who have obtained datasets from data owners as a result of existing letters of access for EU-REACH. He worries about spiralling costs.

'If we spent more than €5bn on EU-REACH, what is there to suggest it is going to be much less for UK-REACH?' – CBA's Peter Newport

"I don't like 'Project Fear'," Mr Newport says. "But if we spent more than €5bn on EU-REACH, what is there to suggest it is going to be much less for UK-REACH?"

Granted, Mr Newport says, the €5bn figure depends on the number of substances registered under UK-REACH and it could come down rapidly if companies are prepared, as data-owners, to share the data for free. He questions what incentive they'd have to do that, however.

Lawyers expect it is just a matter of time before more problems emerge.

"There is a real concern among my clients and contacts that the UK government has not got to grips with data sharing under EU-REACH," Mr Tilling says.

"Statements from ministers in the past year have betrayed a confusion over what the data-sharing principles of EU-REACH actually mean, muddling up 'access to data' with 'data ownership', and assuming that dossier submissions for UK-REACH is a bureaucratic exercise when the barriers are far more substantive."

A House of Lords sub-committee scrutinising the Department for Environment, Food and Rural Affairs' (Defra) no-deal Brexit preparations in 2018 said they were "disturbed to hear" from environment minister Michael Gove that he was not aware of many of the issues surrounding chemical regulations post-Brexit.

In response to the complaints, Defra told Chemical Watch that the government has already issued technical notices with no-deal Brexit advice and is "committed to maintaining an effective regulatory system for the management and control of chemicals which safeguards human health and the environment, and can respond to emerging risks. This will not change when we leave the EU".

'Unveiling the UK-REACH IT system'

Under the no-deal scenario, chemical companies worry they won't just have to enter into new data-sharing agreements, but may also have to also upload the datasets into a UK-REACH IT system that's still a work-in-progress.

EU-REACH was implemented more than a decade ago, from the 2007 adoption of the regulation to the completion of the registration phase-in in 2018.

"UK-REACH suggests that a task, similar in scale and complexity, can be accomplished in two years on a completely unproven IT system," says Bacs chair John Hibbs.

The UK scheme relies on downstream users becoming importers, and therefore registrants. But after talks with Bacs members, Mr Hibbs says "formulator" companies don't have the skills or resource to undertake the additional duties.

"These range from small businesses importing and re-selling gardening chemicals, who have no regulatory resource, to large consumer goods companies who become responsible for their portfolio of 1,000 substances. The numbers just don't add up."

The CBA was told in December that the pilot version of UK-REACH only covers basic registration functionality, so there may also be problems with initial 60-day registration.

"There is a potential problem for people that need to register large volumes of substances, and we have asked for automated upload capability on the new system. We have not received any assurance that will be available or not," says Mr Newport.

Even if the UK-BREXIT IT system works perfectly, data-sharing and other issues could cripple some UK companies. There's still no credible mechanism for EU trade to continue without major disruption in the event of no-deal, Mr Higgs says.

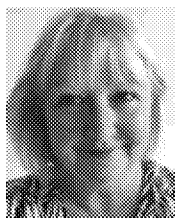
"EU companies will continue to sell into the UK without regulatory barriers, while UK companies are potentially unable to sell into the EU until new registrations are in place."

Echa's advice for companies in a no-deal scenario

While Echa has already published guidance on data-sharing issues, the agency is also preparing an information package to draw companies' attention to the steps they will need to undertake ahead of a no-deal Brexit.

"We are investigating the possibility to put into place changes to our IT Tools (REACH-IT) to enable UK-based companies to appoint an EU-27 OR already before 30 March," Echa told Chemical Watch.

"Simultaneously, we are putting together step-by-step instructions on what these companies need to do in REACH-IT to make the change and also advise them about the exact time frame when this can be done. We aim to publish this information by the end of this month/beginning of February."



Caroline Byrne

Commissioning editor

Related Articles

- [No-deal Brexit: industry alliance warns of £1bn REACH data cost](#)
- [Brexit: UK, EU chemicals industry welcomes agreed draft deal](#)
- [Prime minister: UK to seek 'associate membership' of Echa](#)
- [UK government publishes no-deal Brexit REACH notice](#)
- [UK post-Brexit chemicals IT system could be 'ready tomorrow'](#)

Further Information:

- [UK Draft Agreement on EU Withdrawal](#)
- [Defra's response to the House of Lords subcommittee](#)
- [Defra notice on data to be submitted in no-deal scenario](#)
- [Regulatory Policy Committee REACH document](#)

Guest Column: Echa outlines the key priorities for 2019

Global Business Briefing, February 2019 / CLP Regulation, Enforcement, Europe, REACH, Risk assessment, Substances of concern

Björn Hansen, Echa's executive director, discusses the agency's 2019 priorities including managing the risks of substances of concern



2019 is the first year after the major regulatory deadlines of REACH and the first year during which Echa will start to implement its new strategic priorities.

'Our first strategic priority is to identify and manage the risks of substances of concern,' – Bjorn Hansen, Echa executive director

Our first strategic priority is to identify and manage the risks of substances of concern. Under this, the interplay between the registration, evaluation and risk management processes under REACH and CLP will be streamlined and will make up a substantial part of the agency's work throughout 2019.

At the same time, the two other strategic priorities – improving supply chain communication with a view to increasing safe and sustainable use of chemicals and substituting substances of very high concern, and ensuring the consistency and integration of the EU regulatory system on chemical safety – will remain at the core of the agency's work.

To this end, Echa will support industry in implementing the [ENES tools](#), making more information on uses and exposure available and creating an effective cycle of information to manage chemicals safely. In addition, the agency will continue to implement its substitution strategy, which aims to boost the availability and adoption of safer alternative substances and technologies throughout the EU.

In 2019, we will continue pursuing robust technical solutions for managing data, building up the EU observatory for nanomaterials, taking the first steps towards an EU legislation finder on chemicals, and building on the successful start in developing occupational exposure limits.

Ensuring REACH compliance

The [REACH Review](#) carried out by the European Commission concluded that REACH is an effective instrument, but not yet working efficiently enough. It highlighted several areas of REACH where improvements are needed, and 2019 will see us move more concretely to putting such actions into practice.

One of the key improvements we need to make in 2019 is to do more to ensure REACH compliance.

Back in October 2018, the German Federal Institute for Risk Assessment (BfR) published a [report](#) which showed that around one-third of registration dossiers in the highest tonnage bands do not comply with REACH requirements. This is a message that we hear loud and clear from various sources, but also echoes our own findings.

More compliance checks ahead

Checking the regulatory compliance of registration dossiers has been one of Echa's core tasks since the early days of the agency. However, it has become clear that the 5% compliance check of registration dossiers in each tonnage band has not had the desired effect.

Back when REACH was being developed, a certain level of non-compliance was expected, but the issue here is the extent.

The crucial point about non-compliance is that there may be some effects of a chemical that go unnoticed. While this is not the case for all non-compliant dossiers, it is an underlying cause for concern.

'We will focus more heavily on compliance checks, making it an agency-wide priority,' – Bjorn Hansen, Echa executive director

In 2019, we will therefore need to focus more heavily on compliance checks, making it an agency-wide priority. This means freeing up resources to carry out more dossier compliance work, and making the most of our staff's experience to increase efficiency.

In addition, we will interact and collaborate more proactively with sectors on groups of substances, aiming to come up with solutions to dossier compliance issues which can reduce or eliminate the need of further regulatory steps.

Restriction and authorisation processes

Another aspect of the REACH Review that we will concentrate on during 2019 is clarifying and improving the restriction and authorisation processes.

In practice, we will identify which points in the restriction dossier or authorisation applications are crucial for determining the outcome and where more information is needed.

We believe that having a better understanding here will enable more straightforward decision making.

Achieving this will require greater levels of cooperation with the Commission, Member States, experts, NGOs and industry, and discussions on how to achieve this are already taking place.

The activities implementing BPR and PIC [Biocidal Products Regulation and Prior Informed Consent Regulation] will continue to be as important as ever in ensuring the safe use of substances. We expect intensified assessment of biocidal active substances with potential endocrine-disrupting properties, and continued increases in the number of PIC export notifications during 2019.

Finding ways to be efficient

While working on these areas, we will also be adjusting to our new organisational structure. The changes to our structure better reflect our working environment, and will help us take on new tasks and face future challenges.

One such challenge is, of course, the need for resources. We are a large agency with the potential to do a lot of good work, but there are limitations to how much more we can do without increasing our resources.

The reorganisation will help us to find ways to be more efficient and effective and to develop staff competence to handle the existing workloads under REACH, CLP, Biocides and PIC as well as integrate the new tasks we receive – but to make a real difference, we need to re-discuss the resources at our disposal.

Brexit

Another element we are facing is the UK's imminent withdrawal from the EU. We are fully prepared for this and have been informing industry both in the UK and in the remaining EU-27 of the things they need to consider and act upon.

So, we have a fully packed agenda for 2019 – but I am confident that together we will manage it successfully.



Björn Gaarn Hansen

Executive director, Echa

Related Articles

- [Enes work programme aims to convince companies of its usefulness](#)
- [EU Commission to replace Scoel with Echa's Rac](#)
- [REACH registration project finds low compliance rates](#)

Further Information:

- [REACH review](#)

Expert Focus: Has Beijing's new draft regulation introduced China-REACH?

Global Business Briefing, February 2019 / China, REACH

Heng Li, a senior associate at Mayer Brown law firm in Beijing, compares China's latest draft chemical regulation with EU-REACH to determine the impact it will have on companies



China has introduced a groundbreaking draft law covering all existing and new chemical substances, a big change from the past decade where regulators focused on new substances, especially under the ambit of the Ministry of Ecology and Environment (MEE).

The MEE published the draft Regulation on the Environmental Risk Assessment and Control of Chemical Substances on 8 January, with public comments accepted until 20 February.

The wide-ranging draft will affect companies manufacturing, processing and using, importing and exporting chemicals in and from China. It covers the environmental risk assessment and control of chemical substances, and offers a preview of changes that may be incorporated into China's new substances management regime.

When the text of the draft law was unveiled, some in China referred to it as the 'real' China-REACH. This article examines the draft in detail to determine whether that description is accurate and what companies need to know about the changes.

China's changing laws

A single chemical is now regulated by a variety of laws and Chinese authorities depending on its legal status as, for example, a new, existing, or hazardous chemical.

The MEE has promulgated MEP Order 7, which has been in effect since 15 October 2010 and is now being revised. It introduces REACH-like requirements for the registration of new chemical substances but has a different scope from EU-REACH, which covers existing and new chemical substances.

The ministry has been laying the groundwork for the regulation of existing chemical substances since 2016. China drafted the technical guidelines for screening chemicals subject to prioritised assessment and it issued the first batch of priority control chemicals in 2017. The changes indicate that the MEE does not intend to regulate all types of existing substances, focusing instead on those that are prioritised.

The draft Regulation is expected to become the overarching legislation governing existing and new chemical substances but with an emphasis on the control of environmental risk. This is defined as "the degree and probability that a chemical substance with environmental or health hazard properties will enter into the environment and cause harmful effects on the ecological environment and human health".

Since the draft Regulation is likely to be promulgated by the State Council pursuant to China's Legislative Law, its legal effect is expected to be superior to the departmental rules promulgated by the relevant ministries (including the revised MEP Order 7), reflecting the MEE's intention to intensify the regulation of chemicals.

'Its legal effect is expected to be superior to the departmental rules promulgated by the relevant ministries, including the revised MEP Order 7, reflecting the MEE's intention to intensify the regulation of chemicals,' Heng Li, Mayer Brown

Important points for companies

There are several key features that companies may want to consider.

The draft Regulation governs both existing substances and new substances that are not included in the Inventory of Chemical Substances of China (ICSC). The MEE will establish and update the ICSC, which is newly introduced in the draft. It is likely to be based on the current Inventory of Existing Chemical Substances of China (IECSC). It is not clear if the ICSC will include all of the existing substances in the IECSC, however.

The draft will not apply to substances "used for laboratory-scale research or reference standards", but there is an exception for new chemical substances manufactured or imported in quantities at or above 100kg/year. While the phrase "used for laboratory scale research or as reference standards" is not defined, this may be clarified in the implementation rules or MEE guidelines.

Draft highlight

The draft Regulation highlight involves the provisions on environmental risk assessment and control, which apply to any 'chemical substance', not distinguishing between existing and new substances.

'The draft Regulation highlight involves the provisions on environmental risk assessment and control, which apply to any chemical substance, not distinguishing between existing and new substances,' Heng Li, Mayer Brown

In essence, the draft requires the MEE to organise the environmental risk assessment of chemical substances subject to prioritised assessment, based on information acquired through industry reporting and specific activities carried out by the MEE, including environmental risk screening.

Any company manufacturing, processing and using, and importing a chemical substance would need to provide the MEE with an annual report including basic information about the substance, including its name, quantities and uses.

As part of the environmental risk screening, the MEE is to establish a plan for the risk assessment of chemical substances subject to prioritised assessment. Companies manufacturing, processing and using, and importing a substance in the plan would need to provide information, including data on emissions, physico-chemical properties, toxicology and ecotoxicology.

Once the risk assessment is complete, the MEE will promulgate the relevant risk control measures, along with other ministries, to establish:

- a catalogue of chemical substances subject to prioritised control (the Prioritised Control Catalogue, or PCC), including substances that must abide by additional laws such as the Prevention of Atmospheric Pollution, of Water Pollution and of Soil Pollution Laws;
- a catalogue of restricted chemical substances (the Restriction Catalogue), including substances selected from the PCC subject to restrictions on uses and relevant import/export licensing;
- a catalogue of prohibited chemical substances (the Prohibition Catalogue), including substances selected from the PCC that would be strictly prohibited from being manufactured, processed and used, imported and exported in and from China; and
- an Information Publication Platform for Chemical Substances Subject to Prioritised Control requiring companies to disclose information annually.

Key changes for new substances

The draft Regulation reveals key changes that are likely to become part of China's substance management regime. These are:

- new substances would be subject to registration or filing. The current requirement of simplified registration provided by MEP Order 7 appears to be replaced by the filing process;
- registration would apply to the new substances that are manufactured or imported at or above one ton/year;
- filing would apply to the new substances below one ton/year (except for the new substances which are "used for laboratory scale research or as reference standards" and are below 100 kg/year) and the other specified substances (for example, low-concern polymers);
- the application for the registration of persistent bioaccumulative toxic chemicals (PBTs) and "the substances possessing the same hazards" would be rejected, and they would be included in the Prohibition Catalogue; and

- registration would be subject to a fee payable to the MEE.

The draft Regulation maintains the statutory timeframe for inclusion of a registered new substance into the ICSC, which is five years after completion of the registration. In addition, the draft empowers the MEE to provide, in the ICSC, the restrictive conditions on the uses of certain substances where necessary.

Enforcement

The draft Regulation introduces the possibility of severe penalties for companies manufacturing, processing and using, and importing and exporting chemicals in and from China.

'A company failing to complete the required new substance registration could face an administrative fine of up to RMB2,000,000 (\$295,000),' Heng Li, Mayer Brown

For example, a company failing to complete the required new substance registration could face an administrative fine of up to RMB2,000,000 (\$295,000), compared with a fine of up to RMB30,000 under MEP Order 7. In the most severe cases, they may be ordered to cease business. Companies are encouraged to submit their comments before the public consultation deadline in February.

Rapid promulgation of the legislation is not expected, given China's legislative priorities and the need to align the interests of the various affected ministries before the State Council can take action.

The draft may also be revised and subject to additional consultations leading up to its promulgation, so companies should submit comments if they want to propose changes or introduce new provisions.

It is vital that companies actively monitor the enactment of the implementation rules of the draft. While the draft Regulation introduced general requirements, many detailed requirements must be specified by the relevant departmental rules and official guidelines to be promulgated by the MEE and other ministries.

These include:

- the definition of technical terms such as PBTs and 'substances possessing the same hazards';
- the detailed procedure of environmental risk assessment and control, specifically whether the industry would be provided with opportunities to defend their products;
- the protection of CBI; and
- detailed requirements on new substance management to be provided in revised MEP Order 7 and the associated official guidelines.

Companies are also encouraged to assess the draft Regulation's impact on their products, supply chain organisation and global compliance strategy from a legal and regulatory standpoint at the earliest possible stage.

The 'real' China-REACH?

There are certainly REACH-like elements in the draft Regulation. Like EU-REACH, it governs existing and new substances.

The environmental risk assessment process also appears to be similar to substance evaluation under EU-REACH, where the MEE will play a dominant role and could ask industry to submit additional data.

Furthermore, the process for including a substance in the Restriction Catalogue is similar to the restriction process under the European law. Both are risk-based and are initiated by the authorities.

But the draft Regulation differs in other respects.

While the draft covers only environmental risk, EU-REACH covers all types of risks, including those caused by the physical and health hazards of a chemical substance.

The draft requires the registration or filing of new substances only, irrespective of the tonnage. EU-REACH, however, requires the registration of existing and new substances at or above one ton/year.

China's draft Regulation introduces the inclusion of a substance in the Prohibition Catalogue but it doesn't provide an authorisation process. Listing in the catalogue would result in a ban on its manufacturing, use, import and export in and from China. Under EU-REACH, however, even if an SVHC is included in Annex XIV the industry can apply for an authorisation to continue its use(s) in the EU.

In summary, the draft Regulation has REACH-like elements but it cannot be considered 'China-REACH'.

The differences between this legislation and EU-REACH, and its relationship with the other laws in China, reflect the unique nature of the country's legal and administrative systems. Chinese legislators take this into consideration when drafting legislation.

The views expressed in this article are those of the expert author and are not necessarily shared by Chemical Watch.

Note: Your access to this subscriber-only article is through a corporate subscription



Heng Li

Mayer Brown lawyer

View [transparency statement](#)

Further Information:

- [China's draft Regulation](#)
- [EU-REACH Report](#)

© 2019. Reprinted and distributed by kind permission of Chemical Watch.

OTHER ARTICLES

Erin Brockovich slams Trump administration over plan to stop regulating toxic chemicals

The Hill

Despite a lack of formal education, she exposed the company for leaking **toxic chemicals** into the groundwater and poisoning residents in the town of ...

Trump EPA won't limit chemicals found in Alabama drinking water, report says - AL.com

Arsenic and Lead Are in Your Fruit Juice: What You Need to Know

ConsumerReports.org

But there's another, lesser-known health risk with these juices: They may also contain potentially **harmful** levels of arsenic, cadmium, **and lead**, ...

Toxic heavy metals found in 45 popular packaged fruit juices - PhillyVoice.com

Full Coverage

Message

From: Labbe, Ken [Labbe.Ken@epa.gov]
Sent: 2/12/2019 8:34:10 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips, 02/12/2019

<https://www.eenews.net/stories/1060120233>

<https://www.cnn.com/amp/2019/02/11/reuters-america-exclusive-u-s-epa-may-issue-e15-gasoline-plan-without-biofuel-credit-trade-limits-sources.html>

<https://e360.yale.edu/features/how-trump-administration-has-pulled-back-on-regulating-toxic-chemicals>

<https://www.augustachronicle.com/opinion/20190211/editorial-epa-rules-on-water-are-ridiculous-overreach-on-landowners?template=ampart>

<https://www.apnews.com/c97dc9a772d3437bb17459fa7c95871b>

<https://www.capitalpress.com/content/tncms/live/>

<https://thinkprogress.org/coal-trump-tva-wheeler-epa-murray-kentucky-87d644a4e0e0/amp/>

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120359>

<https://www.reuters.com/article/us-usa-ethanol-epa/epa-opts-for-single-e15-rule-after-considering-separating-trading-curbs-idUSKCN1Q11VJ>

<https://subscriber.politicopro.com/energy/article/2019/02/trump-calls-to-save-coal-plant-supplied-by-major-supporter-1163128>

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120341>

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120349>

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120353>

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120343>

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120355>

Supreme Court environmental cases: The watch list

<https://www.eenews.net/stories/1060120233>

The Supreme Court is halfway through its current term, but the bulk of its environmental issues are still awaiting resolution.

Court watchers have their eyes on three types of cases: the ones already argued, a few on deck this spring and petitions the high court hasn't yet decided to review.

The justices started the year with an unusual number of cases of interest in the energy and environmental policy world, with issues ranging from endangered frogs and uranium mining to Indian power plants and moose hunting.

"They're kind of all over the map with respect to environmental law," said University of Maryland law professor Robert Percival.

Of the half-dozen of those argued in the fall, the justices have decided only one, issuing a November ruling that remanded a closely watched Endangered Species Act fight to a lower court (*Greenwire*, Nov. 27, 2018).

Advertisement

The Supreme Court is expected to resolve the others in the next few months in what will be Justice Brett Kavanaugh's first big chances to influence environmental issues from the high court's bench.

"What's the impact of Justice Kavanaugh replacing Justice [Anthony] Kennedy? Before he was confirmed, you could say we had a 4-4 split with respect to justices sympathetic towards environmental regulation and those skeptical of it," Percival said. "Now, I think it's fair to say that the balance shifts in favor of justices that are skeptical of it."

The Supreme Court is juggling a busy calendar of oral arguments this spring. Environmental policy experts are watching two upcoming cases that touch on federal regulations and energy development. The first could have broad impacts on administrative law standards that affect environmental litigation.

Finally, court watchers are eager to find out what new issues the Supreme Court will add to its docket — cases that will likely be heard in the new term that begins in October.

Those pending petitions raise many of the most consequential environmental issues afloat at the high court right now: questions about the Clean Water Act, Superfund sites and other hot topics.

What's on the docket?

Kisor v. Wilkie: The biggest administrative law case set for arguments this spring is a fight over agency deference standards. The dispute involves veterans' benefits but centers on a broader question of whether the Supreme Court should overrule what's known as *Auer* deference, which directs judges to defer to an agency's reasonable interpretation of its own ambiguous regulation. If the Supreme Court overrules the standard, experts expect judges to apply more scrutiny to certain agency actions, and they expect federal agencies to start writing clearer regulations. Arguments are March 27.

Parker Drilling v. Newton: The court last month agreed to take up a challenge to an appeals court ruling that state wage-and-hour laws extend to work conducted on federally controlled seabed. The case comes as the Trump administration is preparing to release the next iteration of its five-year plan to lease more than 90 percent of available federal offshore tracts for oil and gas development. Arguments have not yet been scheduled.

What are we waiting on?

Gundy v. United States: One of the first cases the Supreme Court heard in October involved a wonky constitutional law issue that could affect federal laws and agency power. The dispute involves a much broader question of just how much decisionmaking power Congress can delegate to administrative agencies.

Knick v. Township of Scott, Pa.: The justices have heard oral arguments twice this term in this property rights case — the first time before Kavanaugh was confirmed. At issue is how landowners get to court when they think a local government agency has taken their property. The outcome could affect challenges to local zoning and environmental rules.

Washington State Department of Licensing v. Cougar Den Inc.: A state gasoline tax and tribal treaty rights are head-to-head in this dispute. Washington state wants businesses to pay up when transporting fuel across state lines, but the company involved says it's exempt from the gas tax because of treaty language giving the Yakama Nation access to public highways.

Budha Ismail Jam v. International Finance Corp.: The Supreme Court's fall schedule also featured a fight over a coal-fired power plant in India. The main legal issue is whether Indian villagers can file a lawsuit against the International Finance Corp., an arm of the World Bank Group, for funding the project.

Sturgeon v. Frost: An unusual case involving a hovercraft-riding moose hunter in Alaska returned to the Supreme Court this term after first being considered a few years ago. The litigation involves public lands, water rights and constitutional questions. The justices' final ruling could have impacts in Alaska and beyond.

Virginia Uranium Inc. v. Warren: Another environmental case from the fall has an important federalism connection, as a Virginia firm fights for the right to produce uranium in the state. The state has long prohibited the process, but the company and the Trump administration say the mining ban treads on the federal government's turf.

Herrera v. Wyoming: State wildlife rules, federal lands and tribal treaties were at issue in this case involving a Crow Tribe member who hunted elk on national forestland in Wyoming. The state prosecuted the man for illegal hunting, sparking a battle over treaty rights and federal versus state jurisdiction.

Carpenter v. Murphy: This capital case argued in November raises questions about whether 3 million acres in Oklahoma are still under tribal control. A finding that the land is in fact still held by the Muscogee (Creek) Nation could have major ramifications for local energy operators.

Thacker v. TVA: A test of the Tennessee Valley Authority's legal immunity has yet to be resolved. This case stems from a lawsuit over personal injuries sustained during maintenance work by the federally owned electric utility. The court is still weighing whether and in what cases TVA can be sued in the course of its commercial activities.

What petitions are pending?

County of Maui v. Hawai'i Wildlife Fund and Kinder Morgan Energy Partners LP v. Upstate Forever: The Supreme Court is considering whether to take up a major Clean Water Act debate involving whether the law applies to pollution that moves through groundwater before reaching a waterway subject to federal oversight.

Atlantic Richfield v. Christian: A fight over a Superfund site in Montana could also land on the court's docket. The case involves whether property owners can bring common law claims for restoration of a site after EPA has

already approved cleanup efforts. The Supreme Court asked the Trump administration to file a brief expressing its views.

Adorers of the Blood of Christ v. Federal Energy Regulatory Commission: Catholic nuns are asking the high court to take up their challenge to a natural gas pipeline in Pennsylvania. They say the pipeline's route across their land violates their religious freedom rights.

Electric Power Supply Association v. Star and EPSA v. Rhodes: Circuit courts have upheld nuclear subsidies in both Illinois and New York. But competing power generators are asking the Supreme Court to step in and strike down the state programs.

Reuters

EXCLUSIVE-U.S. EPA may issue E15 gasoline plan without biofuel credit trade limits

<https://www.cnbc.com/amp/2019/02/11/reuters-america-exclusive-u-s-epa-may-issue-e15-gasoline-plan-without-biofuel-credit-trade-limits-sources.html>

Humeyra Pamuk

WASHINGTON, Feb 11 (Reuters) - The U.S. Environmental Protection Agency is considering releasing its draft proposal to expand sales of higher ethanol blends of gasoline without including simultaneous measures it promised the oil industry to curb biofuel credit speculation, according to three sources familiar with the matter.

The move would help the agency lift a summertime ban on sales of so-called E15 gasoline in time for the U.S. driving season, but is likely to anger oil refiners that had been asking the Trump administration for biofuel credit market reforms to reduce their costs.

If EPA passed on introducing biofuel credit trading limits, it would leave the door open to potential speculative price surges that could cost refiners like Valero Energy Corp hundreds of millions of dollars.

President Donald Trump announced in October he was directing the EPA to allow year-round sales of E15, in a win for the powerful corn industry which supplies ethanol. E15 gasoline contains 15 percent ethanol, versus the 10 percent found in most U.S. gasoline.

The ban had been imposed over concerns that E15 contributes to smog in hot weather.

EPA spokesman Michael Abboud declined to comment.

The EPA had initially planned to combine credit trading limits into the E15 rule as a concession to the oil industry, which says speculation increases the price of biofuel credits it must purchase to comply with federal law.

Under the U.S. Renewable Fuels Standard oil refiners have to blend increasing volumes of biofuels into the nation's gasoline and diesel each year, or purchase credits - called Renewable Identification Numbers - from those who do.

The combined draft proposal was scheduled for release this month, and was meant to be finalized and implemented by June.

"The EPA has been seriously looking at dropping the RIN reform to speed up the process on E15," one industry source with knowledge of the matter said.

One other source said that the EPA had already decided to delay the credit trading limits. "They separated the RIN reform to ensure that the (E15) rule would get done in a timely manner," the source said.

The sources asked not to be named discussing the matter.

The agency is still working to release its draft rule for E15 by the end of the month, possibly within days, and is planning to expedite the rule-making process to finish it by June when seasonal driving demand picks up.

The recent partial government shutdown in the United States had raised concerns the effort might not be completed on time because agency workers were furloughed. Bill Wehrum, a senior EPA official, in charge of the department drafting the rule, said the agency would still make it ready for summer driving season.

(Reporting by Humeyra Pamuk; Additional reporting by Jarrett Renshaw; editing by Richard Valdmanis and Lisa Shumaker)

Yale E360

How Trump Administration Has Pulled Back on Regulating Toxic Chemicals

<https://e360.yale.edu/features/how-trump-administration-has-pulled-back-on-regulating-toxic-chemicals>

By [Eric Lipton](#)

The Trump administration has halted bans on toxic chemicals that are known to cause serious health threats. These moves, led by an ex-industry group executive now at the EPA, have allowed the continued use of products found to cause cancer, birth defects, and other ailments .

TCE is a clear, colorless liquid with a sweet odor that has proven itself for decades as an especially effective way for dry-cleaning shops to lift stubborn stains off of clothing, be it eye makeup, shoe polish, or ballpoint ink. NMP is another all-but-magic solvent, although it usually has a slightly yellow tint and a fishy odor. It is such a potent paint remover that if you spray it on a wall — as many city governments have done for years — you then can use a rag to simply wipe graffiti away.

There is just one complication with both of these modern conveniences: These substances are extremely harmful to your health. In fact, high levels of exposure to TCE in particular can kill you, while NMP causes birth defects, research shows.

That's the reason that the U.S. Environmental Protection Agency, in late 2016, moved to ban many of the ways these two products are used, as well as uses of a third even more toxic chemical called methylene chloride, which has been blamed in dozens of deaths.

This was a revolutionary step by the EPA. For the prior 25 years, the agency had been paralyzed when it came to regulating toxic chemicals, after a court ruling in 1991 had effectively curtailed its ability to remove known hazards like asbestos from the market. But thanks to landmark legislation passed by Congress in 2016, the EPA's powers were now clear again, and it was poised to enter a new era of activity on behalf of the public's health as it aggressively moved to remove from the marketplace widely used chemicals that were known to cause serious health threats or even death.

The pullback on the planned restrictions on toxic substances reflects the massive shift in philosophy that has taken place at the EPA.

"For the first time in a generation, we are able to restrict chemicals already in commerce that pose risks to public health and the environment," Jim Jones, then the assistant administrator for EPA's Office of Chemical Safety and Pollution Prevention, said in December 2016, as he proudly announced the planned ban on certain uses of TCE. "Once finalized, today's action will help protect consumers and workers from cancer and other serious health risks."

At least that was the plan. But then came the Trump administration. More than two years later, no final action has been taken on any of these three proposed bans. And while the agency has said it soon intends to move at least on methylene chloride, no action is currently planned for TCE or NMP, despite the well-established public health threats associated with both these chemicals.

Similarly, on pesticides, the Trump-era EPA rejected a proposed ban on the use of chlorpyrifos, which is used on more than 60 crops, particularly in California, and has been blamed for sickening farm workers and causing development disabilities in their children. Instead, the EPA has agreed to simply to do more studies on the threats of chlorpyrifos.

The pullback on the planned restrictions on these substances reflects the massive shift in management and regulatory philosophy that has taken place at the EPA during the Trump era — not just in the way it handles toxic chemicals, but across the agency's public health and environmental mission, from the way it protects clean air and clean water to efforts to combat climate change.

This has not simply been the typical pendulum swing that occurs anytime the party in charge at the White House flips.

Jones, the former EPA official, was no tree-hugging liberal. He had spent 30 years at the agency, under both Democrat and Republican administrations, and after he left the EPA in early 2017 he took a job with an industry trade association that represents major industrial chemical companies such as the BASF Corporation.

But well before 2016, it had been obvious to just about anyone who tracked how toxic chemicals are regulated in the United States that the time had finally come for the EPA to make some tough choices — choices that in some cases meant restricting the use of certain chemicals that might be profitable sales lines for the

manufacturers. Yet once the agency had documented that specific chemicals were clearly a threat to public health, it needed to be able to move to prohibit their use.

The federal government had fallen so far behind in this task that major retailers like Wal-Mart and Target had become de facto regulators, as they were making decisions to stop selling certain harmful products, including methylene chloride, even before the EPA took action.

As a reporter at *The New York Times* based in Washington, I have had a particular interest in how the EPA regulates toxic chemicals and pesticides, given just how directly decisions related to these products impact the daily lives of so many people in this country — from farmworkers and dry-cleaning shop employees, to homeowners and consumers.

Policy changed ordered by one key EPA official reflected arguments, almost word for word, she had pushed as an industry advocate.

Prior to the election of President Trump, I specialized in writing about corporate lobbying in Washington, looking at such topics as how the pharmaceutical industry worked to kill off any price controls, or how the energy industry successfully moved during the Obama administration to get the ban on the export of crude oil lifted.

Once Trump moved into the White House, I watched his team fill key spots across federal agencies. Every president appoints experts who have views that reflect his own, and these people have work experience in the fields and industry sectors they are charged with helping to regulate.

David McIntosh, a former air pollution attorney at the Natural Resources Defense Council (NRDC), one of the country's most influential environmental groups, took a job early in the Obama administration as a senior legislative adviser to then-EPA Administrator Lisa Jackson. Michael Goo, NRDC's former legislative director on climate issues, soon thereafter joined McIntosh at the EPA and helped Jackson craft what would become the Clean Power Plan; after leaving the EPA, Goo was hired by NRDC as a lobbyist.

So why is it any different that the Trump administration appointed a former American Chemistry Council executive, Nancy Beck, to help oversee toxic chemical regulation, or that the EPA itself is now run by a former coal lobbyist and the Interior Department is run by a former oil industry lobbyist? That is a question I get asked frequently, particularly by conservatives.

My answer is that both sides — liberals and conservatives — do basically stack the decks, filling key jobs with people who are sympathetic to their world views and committed to executing on that mission. But there is something materially different about this alignment in the Trump era — it is such an extreme flipping of roles, with huge consequences on public policy.

Beck, in her role as a top executive at the American Chemistry Council — a trade association that represents an industry that sells at least \$500 billion worth of products each year — had helped lead the charge against the

regulation of certain toxic chemicals and against the rules the EPA intended to use to decide when their use should be banned or restricted.

Within a matter of weeks of her arrival at the EPA, Beck was dictating major revisions in proposed EPA policies detailing how the agency was going to define “risk” and prioritize which chemicals it would examine. The changes she ordered reflected arguments, almost word for word, that she had pushed as an industry advocate. She engineered these changes over the strong objection of long-time EPA professional staff.

And that was just the first of a long series of steps that have been taken that repeatedly suggest the agency is moving, with a certain urgency, to protect the interests of chemical manufacturers.

Consider the letter sent in March 2017 to the EPA by a group known as the Halogenated Solvents Industry Alliance, a trade association that represents makers of TCE and other chemicals. The group urged the EPA to “withdraw the proposed rule” banning certain uses of TCE, arguing that the proposed move by the agency, which was made after years of study, was “based on a very deficient risk assessment.” The industry group backed up this plea with two in-person, private meetings at the EPA headquarters, agency records show.

The chemical manufacturers also asked Squire Patton Boggs, one of the most prominent lobbying firms in Washington, to intervene with the House of Representatives to press the Republican-controlled body to pressure EPA to slow down any ban on TCE, NMP, or methylene chloride.

Soon enough, language had been written into the annual House appropriations report for the EPA asking (although not mandating) that the agency drop the proposed bans, using language that not so coincidentally echoed the pleas that the industry group had made directly to the EPA.

Separately, the industry group joined with other chemical and pesticide manufacturers in challenging the way the EPA evaluates academic and medical research, attacking what critics of the EPA have called “secret science.” The industry group cited what it called “the transparency problem” with the research that the EPA had in part relied on to conclude that TCE contamination of drinking water was a cause of heart defects in newborn children. The “data quality concern” was “sufficient to preclude” the study “from being used as the basis for regulation,” the industry contended.

So just what has the EPA done?

The major delay in implementing these bans is a victory for the chemical industry. Sales can continue, unimpeded.

As requested by the chemical industry, it is no longer moving ahead with the proposed rule to ban TCE and NMP, and instead has restarted the process to broadly re-evaluate these two toxic chemicals. This has caused a major delay, which as far as the chemical industry is concerned is a victory. Sales can continue, unimpeded.

The proposal to ban the commercial use of methylene chloride as a paint stripper is still being considered, but the draft final rule now awaiting final action by the White House would significantly narrow the ban, according to information collected from environmental groups, as it would likely only apply to sales to consumers, not commercial users of the product.

And the EPA is considering a proposed new rule called Strengthening Transparency in Regulatory Science that would — just as the chemical industry wants — restrict the agency’s ability to rely on certain research, if the data is not publicly available. Scientists and environmentalists have noted that key health research data often cannot be released due to privacy issues. Yet the proposed new E.P.A rule would likely knock out dozens of studies that have found harm caused by toxic chemicals and pesticides and make it harder for the EPA to justify any move to ban or restrict their use.

And what about the apparent conflict of interest that Beck had, as she switched from fighting the EPA to try to block restrictions on certain toxic chemicals to helping run the office that adjudicated these matters?



Drew Wynne, of Charleston, South Carolina, who died in 2017 after inhaling fumes from a paint stripper containing methylene chloride.

The Trump-era EPA simply issued two separate “impartiality determinations” that allow Beck to participate in these debates, citing that her “unique expertise, knowledge, and prior experience will ensure that the Agency is able to consider all perspectives, including that of the regulated industry’s major trade association.”

The regulated, in short, had become the regulators. And then the ethics office had signed off on this role reversal as the new norm.

So what does this mean for public health? Consider chlorpyrifos: About 6 million pounds are sprayed onto fields nationwide each year — particularly on such crops as almonds, alfalfa, and citrus. If President Trump had not been elected, that pesticide would almost certainly now be off the market. The EPA in late 2016 had started the process of banning chlorpyrifos, before Trump's first EPA administrator, Scott Pruitt, overrode that effort in March 2017, just a month after he took office.

Instead, the spraying continues, as do the cases of workers falling ill — and reports of childhood respiratory complications, developmental disorders and lower I.Q.s.

It is a choice the Trump-era EPA has made.

The Augusta Chronicle

Editorial: EPA rules on water are ridiculous overreach on landowners

<https://www.augustachronicle.com/opinion/20190211/editorial-epa-rules-on-water-are-ridiculous-overreach-on-landowners?template=ampart>

By Augusta Chronicle Editorial Staff

A few miles south of Dearing, McCorkle Nurseries grows shrubs, vines, evergreens and perennials for just about any landscaping project you can think of.

But there's one thing - worse than weeds - that the thriving area business doesn't ever want to see crop up.

Government red tape.

That's what could happen if certain federal water regulations are allowed to stand.

Instead, the acting head of the Environmental Protection Agency visited the McCorkle family at their business in McDuffie County last week to support them and countless other farmers in trying to right a serious wrong.

The location for Administrator Andrew Wheeler's appearance was chosen very deliberately. Growing operations like the McCorkles' are the ones powerfully affected - a better word is shackled - by poorly shaped, hard-to-understand federal water regulations.

Last December, the Trump administration presented a proposal to pull back many of the EPA's cumbersome rules - among them, the Waters of the United States, or WOTUS, regulations. Those are rules regarding "navigable waters" that basically tell Americans what they can do with sometimes even the tiniest sprinkling of water on their property.

Under EPA rules set forth by President Obama in 2015, federal protection is extended, for example, to any stream created just by intermittent rainfall, or "wetlands" that really are no more than patches of soggy dirt.

"Putting WOTUS in rough terms," wrote Burt Rutherford, an editor for the agriculture trade magazine BEEF, "the rule means that if a duck thinks it can land on it, any puddle is considered navigable and falls under jurisdiction of the federal government."

A stretch? Not by much. Do those rules sound like they make even the tiniest bit of sense?

They don't make sense to D.E. "Skeeter" McCorkle, either.

"The irrigation ditches here, under the rule that is going away, that could be a water of the U.S.," McCorkle told The Augusta Chronicle. "If we had to get federal permits to grade out our ditches, to do anything related to our ponds or impoundments, it's unnecessary, unneeded bureaucracy."

If growers had to check with the federal government after every rainfall - to make sure a new ditch near a field isn't a new federal waterway that requires a federal permit to deal with - growers would get hardly any actual work done. They couldn't fully use their own land.

Under the more commonsense EPA rules being proposed, there are six categories of water considered waters of the United States: navigable waters, tributaries, some ditches - for navigation or affected by tides - certain lakes and ponds, impoundments (often reservoirs) and wetlands connected to the other five categories.

The changes also spell out what is not a water of the U.S.: waters caused solely by rain, groundwater, many roadside and farm ditches, converted cropland and stormwater control features.

These changes would save money, keep the economy humming, encourage business development and protect national waters that actually are navigable.

If there are other environmental aspects of these massive rules that advocates take exception to, then those green groups can address the disputes in court. But telling farmers what they can and can't do with essentially any random puddle of water on their land? That's shameful federal overreach.

We wish the Trump administration luck in getting these absurd rules changed.

zNano, a California Water Technology Company, Responds to Trump Administration's EPA Decisions About Drinking Water

<https://www.apnews.com/c97dc9a772d3437bb17459fa7c95871b>

February 12, 2019

SAN JOSE, Calif.--(BUSINESS WIRE)--Feb 12, 2019--Recent concerns raised by Delaware Senator Tom Carper about the EPA's appointment of David Dunlap in a key role to approve toxic chemical levels in drinking water has a Silicon Valley company responding with a scalable solution for millions of Americans.

In response to EPA coverage this week by POLITICO, Dr. Adrian Brozell, founder and CEO of zNano, said, "The news that a former KOCH employee is now in a key role with the EPA forced us to speak out. Failure to adequately regulate or limit a class of toxic compounds known as PFAS in drinking water has serious health risks. zNano's patented bioinspired membrane coating could be applied to remove these and other harmful chemicals from our drinking water without the typical fouling resulting in membrane failure."

Dr. Brozell said that these contaminants can be removed from drinking water. Membrane testing by zNano over two years at scale proved excellent in removing toxics such as dyes, which are similar to PFOA and PFOs, two PFAS toxic compounds currently under evaluation by the EPA.

According to POLITICO's EPA coverage, while those two older chemicals are no longer used in the U.S., EPA estimates that there are between 5,000 and 10,000 similar chemical compounds, used in everything from nonstick cookware to water resistant jackets to microwave popcorn bags. Industry has argued that the newer compounds are less dangerous to human health, but scientists say there is reason to worry that the entire class of PFAS compounds poses a risk. EPA-mandated testing, reported by POLITICO, found the chemicals at unsafe levels in at least 16 million Americans' tap water, but activists say the problem is even more widespread. It is reported an estimated 100 million Americans may be drinking water with levels of the chemical that could cause harm.

About zNano: zNano restores water. zNano's bioinspired coatings improve efficiency for Micro, Ultra, Nano and RO membranes. zNano has developed a filter that traps polyester and micro-fibers preventing them from entering the ocean. zNano's advanced water recycling systems lower costs, preserve jobs and conserve resources in a drought-stricken world. The company is based in San Jose, California.

zNano has developed technologies for entities as varied as NASA's urine water recycling, malt wastewater recycling, and textile wastewater cleanup. In addition, Dr. Brozell has designed a filtration box to remove polyester and plastic micro-fibers from laundry waste water that will soon be on zNano's Open Source web page. zNano has developed coatings which improve the efficiency of both Ultra and Nano filter membranes and is in the process of taking them to market. The company is also developing coatings to improve the efficiency of brackish and desalination of reverse osmosis (RO) membranes.

zNano welcomes scientific collaboration for the company's innovations through an upcoming Open Source section of the company's website, www.znanotech.com.

View source version on businesswire.com: <https://www.businesswire.com/news/home/20190212005339/en/>

CONTACT: Press Contact:

Susan Wilson

<https://www.capitalpress.com/content/tncms/live/>

Court grants EPA new hearing on pesticide ban

42 min ago

The 9th U.S. Circuit Court of Appeals will reconsider outlawing chlorpyrifos, a pesticide banned by a three-judge panel in August, but that farm groups say is vital to food production.

A new hearing is a victory for the Environmental Protection Agency, as well as farm groups. A majority of the court's judges has voted to set aside the August ruling and rehear the case in late March in San Francisco.

A time and date has not been set. The case will be heard by 11 judges drawn by lot from the court's roster of judges.

The Trump EPA asked for rehearing after it was ordered in a 2-1 decision to cancel all uses of chlorpyrifos.

The American Farm Bureau Federation and more than two dozen other farm groups filed a court brief supporting the EPA's motion.

The farm groups argue banning chlorpyrifos would wreak havoc on U.S. agriculture. In use on farms since 1965, chlorpyrifos is approved for more than 50 crops and is also used to protect livestock from disease-carrying insects.

The case stems from a petition to ban chlorpyrifos filed in 2007 by the Natural Resources Defense Council and the Pesticide Action Network North America. Environmental groups claim total exposure to the pesticide on food, in drinking water and the environment harms the brains of young children.

Under a court order to make a decision, the Obama EPA proposed banning the pesticide in 2015, but delayed making a final decision until the change in administrations. Faced with a new deadline from the court, the Trump EPA denied the petition in March 2017 and said it would continue assessing chlorpyrifos.

More from this section

The August ruling was written by visiting Judge Jed Rakoff of the U.S. District Court for the Southern District of New York. The majority ruled that the EPA could not justify its decision in the face of evidence that residue on food causes neurodevelopmental damage to children.

The EPA argues the ruling was premature because the science is unsettled and was too broad because the ban also applied to non-food uses. The USDA, under the Obama and Trump administrations, has defended chlorpyrifos as safe and in some cases the only effective chemical against dangerous pests.

The lawsuit to ban chlorpyrifos was filed by the League of United Latin American Citizens, Pesticide Action Network North America, Natural Resources Defense Council, California Rural Legal Assistance Foundation, Farmworkers Association of Florida, Farmworkers Justice Green Latinos, Labor Council for Latin American Advancement, Learning Disabilities Association of America, National Hispanic Medical Association, Pineros Y Campesinos Unidos Del Noroeste and United Farm Workers. The nonprofit law firm Earthjustice represents them.

Washington Attorney General Bob Ferguson has intervened in the case, urging a ban. He is joined by attorneys general in Maryland, Massachusetts, New York and the District of Columbia.

<https://thinkprogress.org/coal-trump-tva-wheeler-epa-murray-kentucky-87d644a4e0e0/amp/>

Trump wants to save a coal plant linked to EPA head's former employer

2 mins ago

[ThinkProgress](#)



Andrew Wheeler, nominee to be Environmental Protection Agency (EPA) administrator, testifies before the Senate Environment and Public Works Committee during a confirmation hearing on Capitol Hill in Washington, DC, on January 16, 2019. CREDIT: NICHOLAS KAMM/AFP/Getty Images

Amid a sharp decline in coal jobs, President Donald Trump on Monday pushed for a federal entity to keep open a coal fired power plant supplied by Murray Energy, a company with strong ties to the administration including Acting Environmental Protection Agency Administrator Andrew Wheeler.

“Coal is an important part of our electricity generation mix and [the Tennessee Valley Authority] should give serious consideration to all factors before voting to close viable power plants, like Paradise #3 in Kentucky!” Trump wrote in a Feb. 11 tweet.

The TVA is a federally-owned generator that doesn’t receive taxpayer money and is funded through electricity sales instead. Paradise Unit 3, which is almost 50 years old, has been deemed too expensive to continue operating, and the TVA board is set to vote as early as Thursday on whether to shutter the coal plant.

Kentucky Gov. Matt Bevin (R) has also called for the plant to remain open, as has Senate Majority Leader Mitch McConnell (R-KY).

Paradise 3's fate has been cloudy for some time. In 2017, TVA retired two other coal plants near the former town of Paradise, Kentucky in compliance with the Mercury and Air Toxics Standards (MATS) rule, an Obama-era anti-pollution effort that the EPA is currently trying to roll back.

High costs coupled with low efficiency at Paradise 3 have combined to slowly doom the coal plant. An environmental assessment released this month meanwhile found that Paradise 3's closure would have minimal impact on the environment.

Throughout his presidency, however, Trump, has pushed hard to revive the dying coal industry, even as jobs decline and plants continue closing en masse.

But Paradise 3 also has the distinction of relying on coal predominately from a subsidiary of Murray Energy, the largest coal mining company in the United States. That company's chief executive, Robert Murray, is a top supporter of the president's, who has pushed repeatedly for the bailout of coal and nuclear plants that Trump has encouraged. Murray notably gave \$1 million to a pro-Trump political action committee in 2018.

New EPA head defends his work with the coal industry in first address

Murray Energy is also the former employer of Wheeler, who worked for the company as a lobbyist, a job he held for years prior to his time at the EPA. Wheeler's former coal lobbying is likely to be further scrutinized as he appears set to sail through his confirmation to formally lead an agency tasked with safeguarding the environment and enforcing regulations.

Before he joined Trump's EPA, Wheeler worked for Murray as part of his role with the firm Faegre Baker Daniels Consulting.

In 2017 alone, Murray paid Wheeler's firm \$300,000, according to the Center for Responsive Politics. Wheeler was a lobbyist during the time period when Murray pushed the Department of Energy to bail out coal and nuclear plants in 2017. During that time, the coal giant also provided the White House with a "wishlist" for the administration, including exiting the Paris climate accord. Wheeler has said he only glanced at the Murray Action Plan and did not look closely at it.

But those days of actively lobbying may be momentarily done for Murray. After Trump announced his plans to nominate Wheeler to permanently fill the seat vacated by former EPA Administrator Scott Pruitt, the coal company terminated its relationship with Faegre Baker Daniels at the end of 2018.

While speculation as to the reasons behind that decision have ranged, a number of experts, including Judith Enck, a former EPA administrator for a region including New York, have argued that with Wheeler in charge of the EPA, lobbying for coal isn't as necessary as it once was.

It's unclear whether Murray's influence played a role in Trump's appeal to the TVA to save Paradise 3. But Wheeler's close ties to the coal industry have followed him as he has moved up at the EPA.

According to documents recently obtained under the Freedom of Information Act (FOIA) by the Sierra Club, coal figures greeted Wheeler's ascent at the EPA.

In one exchange on July 6, 2018 — one day after Pruitt resigned — American Coal Council CEO Betsy Monseu offered support to Wheeler. “As EPA moves forward under your leadership to further the Trump administration's priorities, I offer best wishes to you and the support of the American Coal Council for continuing the path of regulatory reform and rebalancing,” she wrote.

“Thank you,” Wheeler replied.

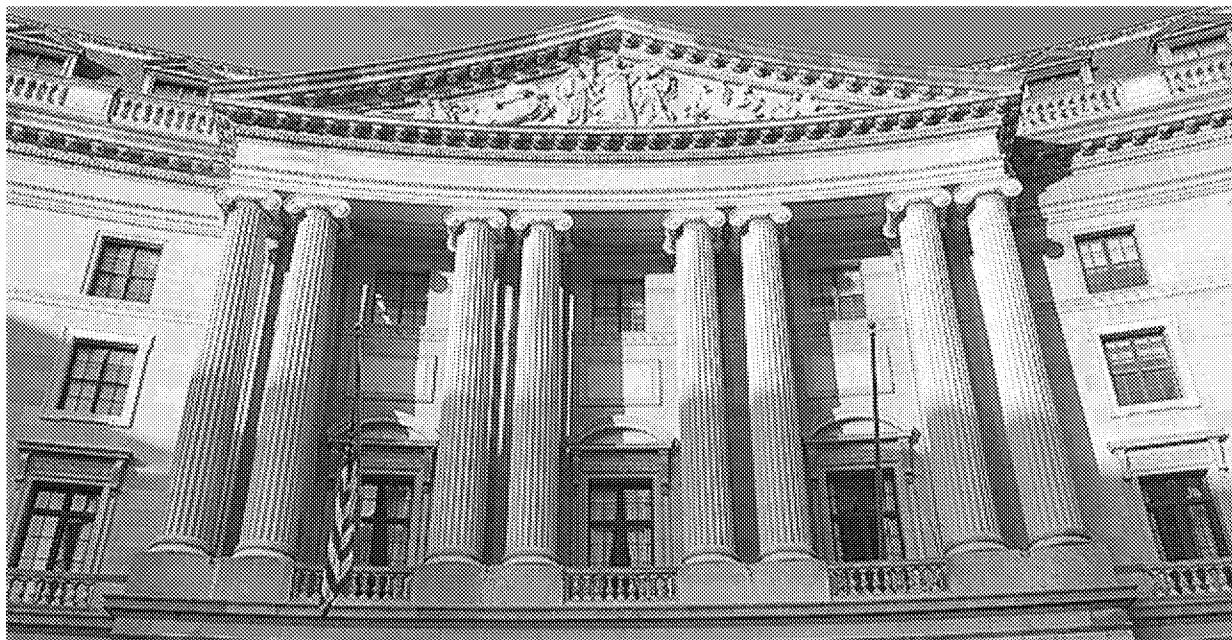
<https://www.eenews.net/greenwire/2019/02/12/stories/1060120359>

Emissions held steady in first year of Trump admin — EPA

Niina Heikkinen, E&E News reporter

Published: Tuesday, February 12, 2019

CLIMATE



EPA headquarters in Washington. Kevin Bogardus/E&E News

U.S. emissions held about even in the first year of the Trump administration, a draft EPA report finds.

The report also found that the transportation sector was the largest emitter of greenhouse gas emissions in 2017, surpassing the electric power sector for the first time.

Total emissions from transportation reached 28.7 percent of overall emissions in 2017, just edging out the electric power sector (27.5 percent), which has historically been the leading emitter in the country.

The figures came out as part of EPA's draft "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2017" published in the *Federal Register* today.

Overall, U.S. greenhouse gas emissions had gone down a slight 0.3 percent, to 6,472.3 million metric tons of carbon dioxide equivalent, from 2016.

But total greenhouse gas emissions increased by 1.6 percent from 1990 to 2017.

The inventory tracks emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride from sources across the country. It also measures how much carbon is taken out of the atmosphere and stored in soils or in trees and other plant life, according to EPA.

The transportation sector saw a growth in emissions over the past five years as a result of drivers traveling more miles, as other sectors decreased their emissions.

The electric power sector saw declining emissions with the increased use of natural gas and a "rapid increase in use" of renewable energy since 2013, according to the draft report.

In other sectors of the economy, industrial emissions (22.4 percent) saw a slight increase over the previous year, largely undoing a reduction in emissions from 2015.

Agriculture accounted for 9 percent of emissions, mainly from nitrous oxide and methane from ruminant livestock.

Commercial and residential sectors accounted for 6.5 and 5.2 percent of emissions, while U.S. territories were just 0.7 percent of total emissions.

The draft report notes that emissions growth has averaged about 0.1 percent per year since 1990, a rate that has trailed total energy use and fossil fuel consumption and is "much slower than that for electricity use, overall gross domestic product (GDP), and national population."

David Lyon, a scientist at the Environmental Defense Fund, noted there did not appear to be a lot of big changes in emissions levels from 2016 to 2017.

"We are not having the rapid reductions that are required," Lyon said.

The annual greenhouse gas inventory is mandated under international treaty. As a party to the United Nations Framework Convention on Climate Change, the United States must report its emissions and carbon "sinks" or removal on a regular basis to the international body.

<https://www.reuters.com/article/us-usa-ethanol-epa/epa-opts-for-single-e15-rule-after-considering-separating-trading-curbs-idUSKCN1Q11VJ>

EPA opts for single E15 rule after considering separating trading curbs | Reuters

WASHINGTON (Reuters) - The U.S. Environmental Protection Agency has decided to release a single draft rule to expand sales of higher ethanol blends of gasoline and curb biofuel credit speculation, after having contemplated separating the measures, a senior official at the administration told Reuters on Tuesday.

FILE PHOTO: A gas pump displays the price for E15, a gasoline with 15 percent of ethanol, at a gas station in Nevada, Iowa, United States, May 17, 2015. REUTERS/Jim Young/File Photo

The EPA was thinking about releasing the measures separately to allow it to focus on finishing its rule to lift a summertime ban on sales of so-called E15 gasoline in time for the U.S. driving season, sources familiar with the matter told Reuters on Monday.

Under the U.S. Renewable Fuels Standard, oil refiners have to blend increasing volumes of biofuels into the nation's gasoline and diesel each year, or purchase credits - called Renewable Identification Numbers (RINs) - from those who do.

"When we came back from the shutdown....we had a conversation about whether we needed to split E15 RVP waiver from the RIN market reform," Bill Wehrum, Assistant Administrator for Air and Radiation, said in an interview.

"Wheeler said the President had instructed us to keep it together and we are going to keep it together," he said, referring to EPA's Acting Administrator Andrew Wheeler.

President Donald Trump announced in October he was directing the EPA to allow year-round sales of E15, in a win for the powerful corn industry which supplies ethanol.

E15 gasoline contains 15 percent ethanol, versus the 10 percent found in most U.S. gasoline. The ban had been imposed over concerns that E15 contributes to smog in hot weather.

Palm oil's PR battle turns to satellite imagery

The agency has planned to release the draft rule in early February but ran into delay due to a 35 day-long partial government shutdown that furloughed workers. But Wehrum has said the agency is still set to complete the rule before June 1, in time for the summer driving season.

The EPA will combine credit trading limits into the E15 rule as a concession to the oil industry, which says speculation increases the price of the biofuel credits it must purchase to comply with federal law.

“We intend to keep them together for proposal and for final action,” Wehrum said, adding that the agency was moving at a ‘very expeditious’ pace on the E15 rule. He did not say when EPA would release the draft rule.

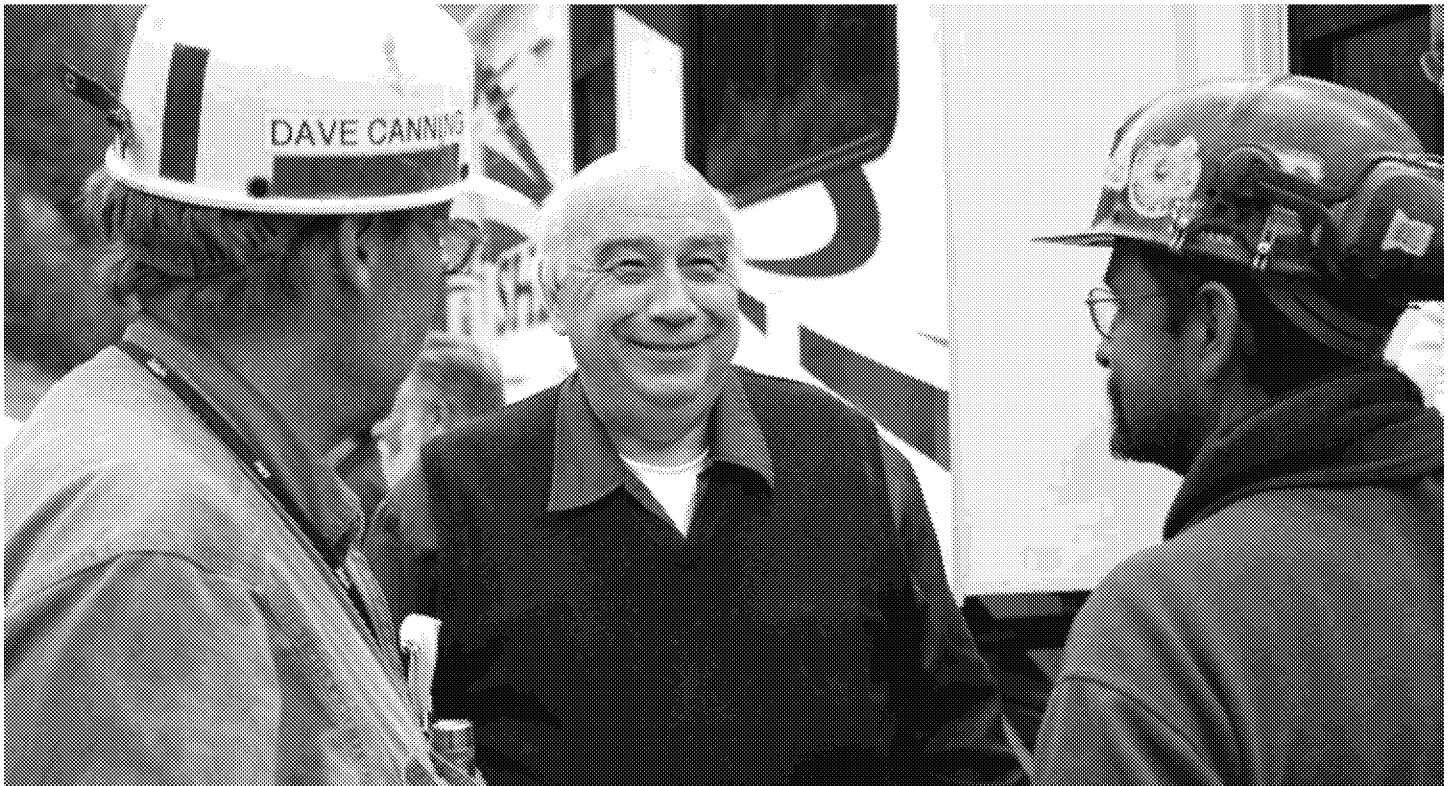
Reporting by Humeyra Pamuk; Editing by Marguerita Choy

<https://subscriber.politicopro.com/energy/article/2019/02/trump-calls-to-save-coal-plant-supplied-by-major-supporter-1163128>

Trump calls to save coal plant supplied by major supporter

By [ALEX GUILLÉN](#) and [ERIC WOLFF](#)

02/11/2019 06:41 PM EST



Murray is a major Trump supporter who has personally lobbied the president to take other actions to help the ailing coal industry, particularly in regions where he sells coal. | AP Photo

President Donald Trump on Monday publicly pushed the Tennessee Valley Authority to save an aging coal plant in Kentucky that buys its fuel from one of the president’s top supporters.

“Coal is an important part of our electricity generation mix and @TVAnews should give serious consideration to all factors before voting to close viable power plants, like Paradise #3 in Kentucky!” Trump [tweeted](#).

Story Continued Below

His missive came just days before the TVA board is slated to vote on the future of Paradise Unit 3, a 49-year-old coal plant that the federally owned utility has said would be too expensive to keep operating.

The 1,150-megawatt plant gets the bulk of its coal from a subsidiary of Murray Energy, according to data from the Energy Information Administration. Robert Murray, the CEO of the mining company, is a major Trump supporter who has personally lobbied the president to take other actions to help the ailing coal industry, particularly in regions where he sells coal. The White House has shelved a proposed coal bailout plan that has been among Murray's top priorities, although the Trump administration has rolled back numerous other environmental rules the magnate has criticized.

Murray is a prolific GOP donor, and his company gave \$1 million from his company to the Trump-supporting super PAC America First Action in the last election cycle, among other big contributions. Acting EPA Administrator Andrew Wheeler, who is awaiting Senate confirmation, lobbied for Murray Energy among other clients before joining the Trump administration, including joining the CEO and other company officials in a 2017 meeting with Energy Secretary Rick Perry to discuss Murray's policy proposals. Wheeler has said he did not write the action plan Murray presented to the Trump administration.

In a statement, Murray said he has not lobbied the White House to intervene on behalf of the plant.

"We have had no such contact," Murray said in a statement. "In the interest of the TVA ratepayers, the remaining coal-fired unit at the Paradise Plant must remain in operation. The power will be more reliable and lower cost."

Murray later acknowledged in an interview that he has responded to several members of Congress who have asked about "the devastation" that would be caused by the loss of the Paradise coal plant, and he said that Kentucky Gov. Matt Bevin asked about the plant when the two met late last week to discuss another subject. But he told POLITICO he had nothing to do with the president's tweet.

Former New York Mayor Michael Bloomberg, who is mulling entering the Democratic presidential primary, panned Trump's call to bail out the plant.

"As any business leader knows, the top consideration at @TVAnews is cost. Phasing out that coal plant will save Kentuckians money (not to mention their air & water)," Bloomberg tweeted.

TVA retired two other coal-burning units at the Paradise, Ky., site in 2017 because of pollution limits imposed by the Obama administration's Mercury and Air Toxics Standards. The Trump administration is revisiting the underlying justification for the rule and has asked for input on whether to go further. While EPA insists it will not weaken or eliminate the mercury standard itself, environmentalists say the administration is inviting legal challenges that eventually could upend the regulation. TVA replaced the retired coal with new, cleaner gas-burning generation.

The agency on Monday released its environmental assessment finding the proposed closure would cause "no significant impact" on the environment. TVA's board, which currently has seven members and two openings that require Senate confirmation, is slated to vote on the future of Paradise Unit 3 on Thursday. Three of the seven members are Obama appointees; the other four were named by Trump.

TVA has said it wants to close the plant because of "flat to declining" load, low natural gas prices, expected high maintenance and regulatory compliance costs and "poor generation portfolio fit," among other reasons.

In a response to Trump's tweet, TVA said "coal is an important part of TVA's power generation mix and we will give serious consideration to all factors as we make this decision."

TVA did not immediately respond to a request for comment on whether Thursday's vote would be postponed.

Kentucky Gov. Matt Bevin on Saturday said he and Trump would call on the TVA board to postpone its vote until TVA's two open seats can be filled and FERC finishes a study on grid resiliency.

"Fifty percent of a single mine's production goes into this plant. What's it going to do to that mine? What's it going to do to the people who work there — to the people who haul that material? The ripple effect of this is great," Bevin said, according to the Messenger-Inquirer, a local newspaper.

Senate Majority Leader Mitch McConnell (R-Ky.) also called to save the plant. "Kentuckians strongly oppose moving away from coal, and I would hope that the TVA listens to our voices," McConnell said in a video Monday.

Only one TVA nominee is pending in the Senate: John Ryder, a former general counsel for the Republican National Committee. Ryder was not confirmed by the full Senate last year but was re-nominated by Trump last month.

Trump has not yet nominated anyone for the final empty seat. TVA serves Tennessee as well as parts of Alabama, Mississippi, Georgia, North Carolina and Kentucky.

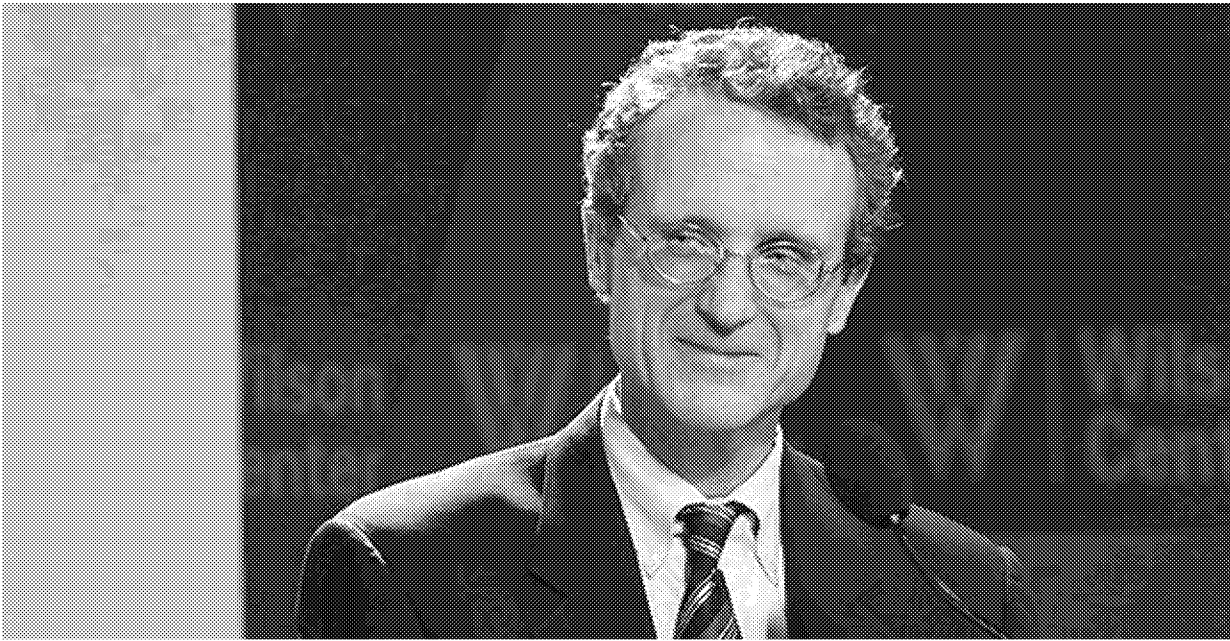
<https://www.eenews.net/greenwire/2019/02/12/stories/1060120341>

Air chief worried about conflicts of interest — emails

Maxine Joselow, E&E News reporter

Published: Tuesday, February 12, 2019

EPA



Bill Wehrum, EPA's assistant administrator for the Office of Air and Radiation, appeared last month in a panel discussion in Washington, D.C. Environmental Change and Security Program/Flickr

EPA air chief Bill Wehrum refused for 10 months to release a recusal letter detailing his past work representing chemical manufacturers, refiners, oil drillers and coal-fired power plants.

But he was concerned about his potential conflicts of interest long before he caved under political pressure and released the letter, newly released emails show.

Two days after joining EPA, Wehrum requested a detailed list of the clients he had represented as an attorney in private practice, according to the emails released to the Sierra Club following Freedom of Information Act litigation.

"Can you send me a list of all clients to whom I billed time for the past 24 months?" Wehrum wrote to a former colleague at the law firm that is now Hunton Andrews Kurth LLP on Nov. 14, 2017.

The colleague followed up with a list of Wehrum's former clients, which included the American Petroleum Institute, American Fuel & Petrochemical Manufacturers and the Brick Industry Association.s

Wehrum still wasn't satisfied. A few days later, he requested a list of the regulations that he had helped the industry clients challenge in court.

Those rules included EPA mandates such as "Mandatory Reporting of Greenhouse Gases" and "Standards of Performance for Petroleum Refineries," according to the list provided by another former colleague.

Despite possessing this information, however, Wehrum declined to detail it in a recusal letter over the following months.

In an interview with *The New York Times* nine months after taking over as EPA air chief, Wehrum noted that he had signed President Trump's ethics pledge. But he said there was confusion over a line in the pledge prohibiting him from participating in a "particular matter involving specific parties."

Wehrum told the *Times* that he had repeatedly sought clarity on that point to no avail. "I have gotten three different interpretations, and what I don't want to do is sign a recusal letter and then have the rules change again," he said.

The following month, Wehrum's foot-dragging caught the attention of Sen. Sheldon Whitehouse (D-R.I.), a longtime climate hawk.

In a bid to ratchet up the political pressure on Wehrum, Whitehouse threatened to introduce an amendment to legislation that would force him to publicize his recusal obligations.

The gambit appeared to work. On Sept. 17, 2018 — 10 months after taking over as EPA air chief — Wehrum finally filed the recusal letter.

At a Senate Environment and Public Works Committee markup the next morning, Whitehouse called Wehrum "a walking conflict of interest." Having made his point, the Democrat then withdrew the amendment (*Greenwire*, Sept. 18, 2018).

The offices of Wehrum and Whitehouse didn't immediately respond to requests for comment this morning.

'Things sure have changed'

The newly released emails also show that Wehrum received updates from industry — and they occasionally provoked a derisive response.

On Feb. 12, 2018, for instance, the American Petroleum Institute reached out to request waivers and exemptions from the renewable fuel standard.

Wehrum had represented API in private practice 17 times, according to the list provided by his former colleague.

And on April 18, 2018, a Southern Co. official emailed Wehrum to share a press release titled "Southern Company is 'Planning for a Low-Carbon Future.'"

Wehrum's response: "Well, things sure have changed."

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120349>

Group calls for elimination of chemical-testing program

EPA



EPA headquarters in Washington. Robin Bravender/File/E&E News

EPA's program for toxic chemical risk assessments should be dissolved and its responsibilities split among other offices in the agency, the Competitive Enterprise Institute argued in a report released today.

The report, by Angela Logomasini, a senior fellow at the conservative business group, said the Integrated Risk Information System has problems with its methodology, relies on sloppy research and lacks transparency.

"Far from being the 'gold standard' for risk assessment, EPA's IRIS has a long history of flawed risk assessments based on faulty research that have led the agency to release counterproductive regulations," Logomasini said in a statement.

Logomasini said the program, which identifies and characterizes the health hazards of chemicals, is too cautious.

"Some may argue that it is sensible to be overly precautionary, but excessive caution can lead to regulations and market changes that can undermine safety and quality of life, ultimately doing more harm than good," the report said.

The report points to a piece of legislation from the 115th Congress as a possible solution.

The "Improving Science in Chemical Assessments Act," from Rep. Andy Biggs (R-Ariz.), would shift the chemical risk assessment process from IRIS to various program offices. The House Science, Space and Technology Committee passed the bill last year, but it was not taken up by the full chamber.

In 2011, a report from a National Academies of Sciences, Engineering and Medicine panel criticized IRIS for its handling of a formaldehyde risk assessment.

Logomasini argued that IRIS staff have worked to implement the report's recommendations but "progress has been sluggish at best."

However, a 2018 report from the National Academies found the program has made "substantial progress" in implementing recommended reforms (*E&E News PM*, April 11, 2018).

Improvements to IRIS were "glossed over or omitted in an effort to continue to demonize the program," Richard Denison, lead senior scientist with the Environmental Defense Fund, said of the report.

Denison also took issue with a specific line from the report: "[IRIS] operates outside the regulatory framework; therefore systems to ensure the scientific integrity of IRIS assessments are limited," the report said.

IRIS was designed to "increase scientific integrity by keeping regulatory decisions at arm's length," Denison said. The notion that the program's independence from regulatory offices would hurt its scientific integrity is "laughable," he added.

EPA did not respond to a request for comment on the report.

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120353>

EPA to tie rules on E15, ethanol credits

Marc Heller, E&E News reporter

Published: Tuesday, February 12, 2019

BIOFUELS



An environmental group is suing EPA over its biofuel volumes, citing habitat destruction. pxhere

EPA will combine its proposal to expand sales of higher ethanol fuel with recommendations for changes in the system of renewable fuel credits, despite calls from the ethanol industry to take up the issues separately.

The move, which Assistant Administrator of the Office of Air and Radiation Bill Wehrum revealed today, means the agency is sticking with a plan it announced months ago. And it's an indication the Trump administration believes the partial government shutdown hasn't derailed efforts to make E15 fuel available this summer.

"EPA is moving forward with a notice and comment rule that will include both E15 RVP and RIN market reform as the president has instructed us to do. This will be done in one regulatory package released at one time with a target of completion by the start of summer driving season," Wehrum said in a statement.

The forthcoming measure reflects top priorities for competing industries. Ethanol groups have been pushing for E15, which is 15 percent ethanol, while petroleum refiners have lobbied for a revamp of the renewable fuel credits they buy to show compliance with the federal renewable fuel standard.

Wehrum's comments followed rumors that EPA might be leaning toward considering the issues separately, which would have been a blow to petroleum groups. The partial government shutdown had fed speculation, especially after acting EPA Administrator Andrew Wheeler told a Senate panel that work had stopped on the E15 rule during the shutdown (*Greenwire*, Jan. 22).

In order to clear E15 for summer sales beginning June 1, EPA had said it would release a draft proposal this month. That would provide enough time for public comment before a final rule is published.

Before Wehrum's comments, the vice president of regulatory affairs at the pro-ethanol group Growth Energy, Chris Bliley, pointed to President Trump's support of E15 in calling on the agency to stay on track.

"The president has pledged to deliver E15 in time for the summer driving season, and we support any effort that helps EPA move forward on this fix to provide consumers with expanded access to a fuel that is already selling at 1,700 locations in 30 states," Bliley said. "We look forward to working with EPA to get E15 over the finish line by June 1."

Ethanol groups said making E15 available year-round would give service stations that haven't offered it an incentive to start doing so.

The renewable fuel credits, on the other hand, have been a point of contention for petroleum companies, which say the high cost in recent years hurt small refiners. Critics, including in the ethanol industry, say the system of credits — called Renewable Identification Numbers, or RINs — isn't transparent and is vulnerable to fraud and abuse.

While those issues are playing out, EPA faces a new lawsuit on ethanol mandates. The National Wildlife Federation is taking the agency to court, saying it overlooked environmental threats in boosting biofuel volumes for this year.

NWF, represented by the environmental group Earthjustice, said EPA didn't adequately consult with the Fish and Wildlife Service on impacts to endangered species, and it cited EPA's own reports about some of the potential effects. In a court [filing](#), NWF also said EPA has allowed land not previously planted with crops to be converted to biofuel production, a complaint ethanol groups say is exaggerated.

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120343>

Democrats want more time to comment on WOTUS

[Ariel Wittenberg](#), E&E News reporter

Published: Tuesday, February 12, 2019



Democrats want the comment period extended for the Waters of the U.S., or WOTUS, rule. Pxhere

Democratic lawmakers in Congress are asking the Trump administration for more time to comment on its Waters of the U.S. regulation, known as WOTUS.

The proposal, announced in December, would limit which wetlands and waterways are protected by the Clean Water Act. The public will have 60 days to comment on the proposed rule once it is published in the *Federal Register*. Last week, EPA Administrator Andrew Wheeler told the American Law Institute/Environmental Law Institute conference he expects the proposal to be published this week.

But some lawmakers say 60 days isn't enough time to review and consider a proposal that would roll back some Clean Water Act protections that have been in place since the Reagan administration.

"Virtually every industry relies on clean water, and these interests — along with all Americans — want to know which waters are covered by federal laws and regulation," senators wrote in a [letter](#) to Wheeler. "Given that your agencies have opted to affect the interests of these constituencies, every effort should be made to provide sufficient time for comment."

The lawmakers want at least a 207-day period for public comments. That's the same amount of time the public ultimately had to comment on the Obama administration's Clean Water Rule, which sought to clarify the scope of the Clean Water Act.

"It makes no sense to deny affected Americans the same opportunity to comment on this replacement proposal," House Democrats wrote in their [letter](#).

More than 160 representatives and 36 senators signed on to the letters, which were led by House Transportation and Infrastructure Chairman Peter DeFazio (D-Ore.) and Senate Environment and Public Works Committee ranking member Tom Carper (D-Del.).

DeFazio has also promised to hold hearings on the proposal, which he called "obscene" last month.

"It would be open season for people to dump crap into our tributaries and wetlands because there would be no regulation," he said, noting that many states do not regulate wetlands (*E&E Daily*, Jan. 4).

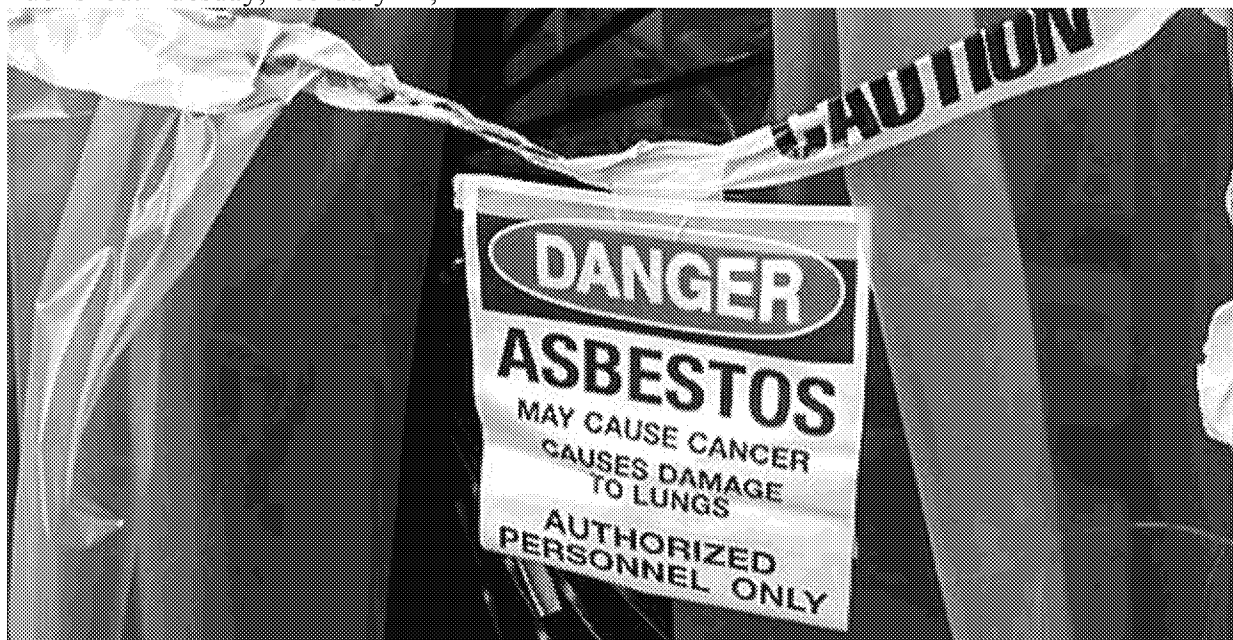
Reporter Ellen M. Gilmer contributed.

<https://www.eenews.net/greenwire/2019/02/12/stories/1060120355>

EPA declines petition for increased reporting

Cecelia Smith-Schoenwalder, E&E News reporter

Published: Tuesday, February 12, 2019



A sign warns of asbestos danger at a cleanup site. EPA

EPA today moved to deny a petition from health advocacy groups that sought to increase asbestos reporting requirements.

The groups asked for amendments to EPA's Chemical Data Reporting rule in an effort to increase asbestos reporting and provide EPA with "the comprehensive information on asbestos importation and use it needs for its ongoing risk evaluation."

EPA said in a proposed rule published in today's *Federal Register* that the agency "does not believe that the requested amendments would result in the reporting of any information that is not already known to EPA."

"After more than a year of research and stakeholder outreach, EPA believes that the Agency is aware of all ongoing uses of asbestos and already has the information that EPA would receive if EPA were to amend the CDR requirements," it continued.

Even if the agency thought the additional amendments would bring in new information, EPA would not be able to finalize those changes in time for use in the ongoing risk evaluation, it argued.

The petitioners were unhappy with EPA's response.

"The hundreds of thousands of deaths caused from asbestos in the U.S. alone should be reason enough for the Trump administration to better inform the public about potential routes of exposure," Linda Reinstein, the president and co-founder of the Asbestos Disease Awareness Organization, said in a statement.

Environmental Working Group President Ken Cook argued that the Trump administration has "turned EPA into an extension of the chemical industry."

"Ratcheting up reporting requirements for one of the deadliest substances known would be a layup for any other president or EPA chief," Cook said in a statement.

Other petitioners included the American Public Health Association; the Center for Environmental Health; the Environmental Health Strategy Center; and Safer Chemicals, Healthy Families.

The American Chemistry Council, the chemical industry's powerful trade group, said in a statement that it "defers to EPA's determination that it has sufficient information to conduct a robust

EPA greenhouse gas estimates show increase in methane

By Miranda Green 02/12/2019 01:21 PM EST

<https://thehill.com/policy/energy-environment/429605-epa-greenhouse-gas-estimates-show-increase-in-methane>

Methane emissions from oil and natural gas in the U.S. grew by 0.5 percent in 2017, according to new data from the Environmental Protection Agency (EPA).

The EPA's latest draft greenhouse gas inventory released Tuesday found the second measured increase for the climate change-linked gas in two years.

The 2017 measure was the highest that methane emissions have been since 2014, according to EPA data.

In all sectors measured by the EPA, methane emissions rose 1.5 percent between 2016 and 2017, the agency reported.

Environmentalists on Tuesday called the increase unacceptable.

"It's worth noting that year after year, we see a similar story. Emission estimates rise or fall by one percent or two, but overall methane emissions remain unacceptably high," said Matt Watson, vice president of the energy program at the Environmental Defense Fund, in a statement.

A study by the American Geophysical Union released last week warned that methane reductions from the oil and gas industry were "essential" to meeting global climate goals.

Since taking office, President Trump has championed fossil fuel production. In his State of the Union speech last week, Trump boasted of “a revolution in American energy” that has led to historic energy export highs and economic growth.

In 2017, U.S. natural gas production increased 2.6 percent and crude production increased 5.9 percent. The U.S. last year also became the top global producer of oil and natural gas.

But that increase has come with emissions consequences.

The agency’s report found that in 2017 energy-related activities were the primary source of greenhouse gas emissions in the U.S, accounting for 84 percent of emissions.

Nearly 97 percent of carbon dioxide and 40 percent of methane emissions come from energy production, the report found. The U.S. itself in 2016 contributed 15 percent of the world’s fossil fuel combusted carbon dioxide emissions.

Message

From: Dunton, Cheryl [Dunton.Cheryl@epa.gov]
Sent: 2/12/2019 1:12:05 PM
To: Dunn, Alexandra [dunn.alexandra@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]
CC: Strauss, Linda [Strauss.Linda@epa.gov]; Keller, Kaitlin [keller.kaitlin@epa.gov]
Subject: Additional tweets for this week

Ex. 5 Deliberative Process (DP)

From: Dunton, Cheryl
Sent: Friday, February 08, 2019 4:14 PM
To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Cc: Strauss, Linda <Strauss.Linda@epa.gov>; Hanley, Mary <Hanley.Mary@epa.gov>
Subject: RE: Tweets for next week and for MC

Got it. Thanks.

From: Dunn, Alexandra
Sent: Friday, February 08, 2019 4:13 PM
To: Dunton, Cheryl <Dunton.Cheryl@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Cc: Strauss, Linda <Strauss.Linda@epa.gov>; Hanley, Mary <Hanley.Mary@epa.gov>
Subject: RE: Tweets for next week and for MC

Ex. 5 Deliberative Process (DP)

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
(202) 564-2910
dunn.alexandra@epa.gov

From: Dunton, Cheryl

Sent: Friday, February 8, 2019 2:56 PM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Cc: Strauss, Linda <Strauss.Linda@epa.gov>; Hanley, Mary <Hanley.Mary@epa.gov>

Subject: Tweets for next week and for MC

Ex. 5 Deliberative Process (DP)

Message

From: Mack, Sara [mack.sara@epa.gov]
Sent: 4/11/2019 8:30:57 PM
To: Dunn, Alexandra [dunn.alexandra@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Baptist, Erik [Baptist.Erik@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Tyler, Tom [Tyler.Tom@epa.gov]; Morris, Jeff [Morris.Jeff@epa.gov]; Henry, Tala [Henry.Tala@epa.gov]; Hartman, Mark [Hartman.Mark@epa.gov]; Keigwin, Richard [Keigwin.Richard@epa.gov]; Messina, Edward [Messina.Edward@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Blair, Susanna [Blair.Susanna@epa.gov]; Sisco, Debby [Sisco.Debby@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]; Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]; Han, Kaythi [Han.Kaythi@epa.gov]; Hughes, Hayley [hughes.hayley@epa.gov]; Altieri, Sonia [Altieri.Sonia@epa.gov]; Strauss, Linda [Strauss.Linda@epa.gov]; D'Andrea, Anthony [dandrea.anthony@epa.gov]
Subject: OPPT/OPP/OCSPS Clips 4/11

OPPT/OPP/OCSPS Clips April 11, 2019

TSCA in Budget Hearing

JDSUPRA: House Subcommittee Holds Hearing on EPA's FY 2020 Budget

Confidentiality proposal

Bloomberg Environment: EPA Wants Chemical Makers to Show Their Work on Secret-Keeping (April 10, 2019)

Chemical Watch: Agency lays out plan for confirming substance identity protection claims under TSCA

E&E News: EPA's confidentiality proposal lacks key details, greens say

Law 360: EPA Rule Would Control If Cos. Can Keep Chemicals Secret

Lead

E&E News: Bills aim to protect military families from lead

Glyphosate

Greenmatters.com: The States That Use the Most Glyphosate – And What You Can Do About It (April 10, 2019)

New Times San Luis Obispo: Let's ban glyphosate

NPR: As Weeks Outsmart the Latest Weedkillers, Farmers Are Running Out Of Easy Options

PoliticoPro: Perdue defends glyphosate again, attacking Vietnam's ban

Toxics

Chemical Watch: Precise GenX mechanism of toxicity eludes EPA scientists

Chemical Watch: Researchers urge more protection for workers from organic flame retardants

TSCA in Budget Hearing

JDSUPRA

House

<https://www.jdsupra.com/legalnews/house-subcommittee-holds-hearing-on-epa-32049/>

Bergeson & Campbell, P.C.

Posted: April 11, 2019

On April 9, 2019, the House Energy and Commerce Subcommittee on Environment and Climate Change held a hearing on the fiscal year (FY) **2020** budget for the U.S. Environmental Protection Agency. The April 5, 2019, memorandum from Representative Frank Pallone, Jr. (D-NJ), Chair of the Committee on Energy and Commerce, states that President Trump's FY **2020** budget requests \$6.068 billion for EPA, a \$2.76 billion (31 percent) decrease from the level set in EPA's FY 2019 Annualized Continuing Resolution. According to the memorandum, the budget cuts "would significantly hinder the agency from accomplishing several of its own identified goals."

Regarding toxic substances, the memorandum notes that the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act) expanded EPA authority to collect fees from chemical manufacturers and processors to defray partially the costs of conducting risk evaluations under the Toxic Substances Control Act (TSCA). Fee collections are limited to 25 percent of EPA's annual costs of administering TSCA activities, but are not to exceed \$25 million per year. The President's FY **2020** budget request includes \$66.4 million for the TSCA Chemical Risk Review and Reduction Program, an increase of \$5.31 million from the FY 2019 enacted level. On September 27, 2018, EPA promulgated a final rule pursuant to the Lautenberg Act to collect fees from chemical manufacturers and processors to support TSCA activities. According to the memorandum, since the rule went into effect in October 2018, EPA has collected \$1.3 million in user fees to supplement federal appropriations to defray the cost of TSCA implementation. More information on the final fees rule is available in our September 28, 2018, memorandum, "[EPA Issues Final TSCA Fees Rule.](#)"

At the hearing, EPA Administrator Andrew Wheeler was joined by Holly Greaves, EPA's Chief Financial Officer. After Wheeler provided his [testimony](#) regarding EPA's proposed FY **2020** budget, Representative Paul Tonko (D-NY), Chair of the Subcommittee, began the questioning. Tonko noted that before being confirmed as EPA Administrator, Wheeler sent a letter to Senator Thomas Carper (D-DE) in which he committed to submitting EPA's systematic review method for TSCA risk evaluations to the National Academy of Sciences (NAS) for review and to make public any feedback received. Tonko asked Wheeler what the status of this submission is, and Wheeler responded that he believes that EPA has submitted some of the data for the first ten chemicals but that those risk evaluations are not supposed to be finished before the **end of 2019**. Tonko questioned whether NAS will have complete discretion in its review of EPA's systematic review method, and Wheeler stated that his understanding is that EPA cannot dictate how NAS conducts its reviews. Tonko also asked about the status of the Integrated Risk Information System (IRIS) assessment for formaldehyde. Wheeler responded that the work done on formaldehyde under the IRIS Program will inform the risk evaluation under TSCA; and because EPA can regulate a chemical under TSCA but cannot under the IRIS Program, EPA chose to proceed to evaluate formaldehyde under TSCA. When Tonko asked when the IRIS assessment will be released, Wheeler responded that EPA is not moving forward with the formaldehyde assessment under the IRIS Program.

Representative John Shimkus (R-IL), Ranking Member of the Subcommittee, asked Wheeler about the backlog of premanufacture notices (PMN) awaiting review. Shimkus noted that TSCA specifically mandates completion of new chemical reviews within 90 days, but no more than 180 days. Of 527 pending PMNs, according to EPA's website, Shimkus asked how many were older than 180 days. Wheeler responded that currently 270 PMNs are older than 180 days, which is lower than it was. According to Wheeler, EPA is working to reduce the backlog and is processing PMNs more quickly than a year ago. Shimkus asked how many PMNs are older than 90 days, and Wheeler responded that 110 to 120 PMNs are over 90 days but less than 180 days old. When asked whether the backlog is an EPA labor or a legal problem, Wheeler responded that it is more a labor problem. EPA has had to work through the program and how the program would be implemented; during the implementation phase, the backlog developed. EPA is trying to process new PMNs as quickly as possible while also working on the backlog. According to Wheeler, EPA has a plan to reduce the backlog of old PMNs that have been "languishing" for months or years. Wheeler reiterated that it is in part a staffing problem. While EPA hired 25 new people last year to work on TSCA, at the same time it lost 25 people. Shimkus asked whether EPA would try to place quickly more experienced scientists and engineers in the TSCA Program to complete more timely new chemical reviews and risk evaluations, and Wheeler said yes.

Pallone expressed concern about EPA's direction, noting particularly EPA's decision to ignore legacy uses of asbestos and stating that it is "unconscionable" that the U.S. is still importing and using asbestos. When Pallone asked Wheeler if he would commit to banning ongoing uses of asbestos ("yes" or "no"), Wheeler stated "yes" but Pallone continued before Wheeler could expand his point. Pallone noted that while former EPA Administrator Scott Pruitt had committed to banning methylene chloride, under Wheeler, EPA is moving forward with only a partial ban that would still allow commercial uses. Wheeler responded that EPA is currently taking comment on several options to manage the commercial use of methylene chloride. More information on EPA's methylene chloride rulemakings is available in our March 20, 2019, memorandum, "[EPA Bans Consumer Sales of Methylene Chloride Paint Removers, Seeks Comment on Program for Commercial Uses.](#)"

Finally, Pallone addressed what he considers EPA's overly broad interpretation of confidential business information (CBI). Pallone asked Wheeler about the studies withheld when EPA released its risk evaluation of Colour Index (C.I.) Pigment Violet 29 and, once EPA finally released the studies, the main data tables that were redacted. Wheeler responded that the redacted tables are CBI and cannot be released. Pallone also asked about the notice of violation (NOV) report regarding TSCA violations by the Chemours Company (Chemours) at two facilities. Pallone noted that the NOV and report are significantly redacted, and that the disclosure even of generic chemical information would be helpful for the community. Pallone stated that he thinks EPA exceeds what is required by law to be redacted and asked Wheeler if he would commit to sharing the unredacted NOV report. Wheeler responded that EPA has to safeguard CBI and that it has directed Chemours to test hundreds of water supplies within the areas of the two facilities.

Regarding the reorganization of EPA's regional offices, Representative David McKinley (R-WV) asked Wheeler what EPA's objective is and what the metrics are. Wheeler stated that the reorganization of the regional offices will take effect on **April 15, 2019**. According to Wheeler, the biggest change is that six regions had enforcement divisions while the enforcement programs for four regions were scattered among the program offices. The reorganization will realign all regions to mirror EPA headquarters, allowing the headquarters' enforcement office to work more closely with the regional enforcement offices.

Representative Bill Johnson (R-OH) noted that he helped get language added to the Lautenberg Act that amended TSCA Section 8 to require a negotiated rulemaking between EPA and regulated stakeholders to reduce duplicate reporting of unintended byproducts. According to Johnson, unfortunately the legal and procedural venues were not conducive to producing a satisfactory result. Johnson stated that he understands EPA is close to proposing a rulemaking under TSCA Section 8 and asked Wheeler whether that rulemaking will address duplicate reporting. Wheeler stated that he believes that it will but will have to get back to Johnson with the details.

Commentary

The hearing was marked by Majority expressions of doubt regarding EPA's budget request as well as statements questioning EPA's commitment to protecting health and the environment and its willingness to uphold statutes as written or at least as interpreted by the questioners. There were also questions noting Wheeler's and other EPA officials' prior work as lobbyists and possible favoritism. Representative Shimkus responded by warning against such "innuendo." Exchanges such as these and others highlighted the palpable tension amongst the Subcommittee's leadership.

The hearing did not yield much new information but it did produce some clarity regarding the counts of overdue and delayed PMN reviews. EPA also offered statements regarding a plan and staffing to reduce the backlog of delayed and "old" PMNs, but specifics were not provided. Perhaps more will be forthcoming in EPA's written responses.

Confidentiality proposal

Bloomberg Environment

EPA Wants Chemical Makers to Show Their Work on Secret-Keeping

<https://news.bloombergenvironment.com/environment-and-energy/epa-wants-chemical-makers-to-show-their-work-on-secret-keeping>

Pat Rizzuto

Posted: 2:50pm, April 10, 2019

- EPA details draft process for companies seeking to keep chemical identities secret
- Toxics law aims to balance business protections with public's right to know

Chemical manufacturers and processors would have to follow specific electronic procedures that detail their rationales for keeping secret the identity of chemicals they make or handle under an April 10 EPA [proposal](#).

The Environmental Protection Agency's proposal, open for comment for 60 days, describes how it will review at least 7,757 chemicals with specific identities that their manufacturers, importers, or processors claim should be kept secret.

The EPA says companies claiming confidentiality for "active" chemical substance identities must substantiate those claims electronically.

"We continue to be committed to fostering transparency about information on chemicals while protecting verified confidential information," said Assistant Administrator for the EPA's Office of Chemical Safety and Pollution Prevention Alexandra Dapolito Dunn on April 10.

Inventory Only

The chemicals are listed on the EPA's confidential inventory of compounds "active" in commerce during the 10-year period ending June 21, 2016. That means the EPA and approved contractors know what the chemical is, but not the public or competitors.

Companies making or using confidential chemicals provide the public a generic name roughly describing their chemical that doesn't allow competitors to replicate it.

Protecting this proprietary information is vital to companies who invest in the development or new application of a chemical.

Yet knowing the identity of a chemical that may be causing health or environmental problems can help industrial hygienists protect workers, researchers investigating community concerns, and first responders or doctors treating patients.

Only Confidential Chemicals Covered

The number of chemicals covered by the EPA's proposal is a subset of the 86,228 chemicals that are or have been in U.S. commerce.

Of those 86,228 chemicals, 47 percent, or 40,655, have been actively in commerce since 2006, the EPA said in a February update of the Toxic Substances Control Act.

Most of those 40,655 chemicals—32,898, or 81 percent—have identities known to the public, according to the EPA. That means the precise identity of 7,757 chemicals, 19 percent, has been claimed as proprietary information. The total number of chemicals with confidential identities may grow before the rule is finalized due to new compounds entering the U.S. market.

The requirement that the EPA review confidential chemical identities was part of the 2016 Toxic Substances Control Act amendments' efforts to balance a company's legitimate need to protect its investments with people's right to know about the chemicals.

To contact the reporter on this story: Pat Rizzuto in Washington at prizzuto@bloombergenvironment.com

To contact the editors responsible for this story: Gregory

Henderson at ghenderson@bloombergenvironment.com; Steven Gibb at sgibb@bloombergenvironment.com; Rob

Tricchinelli at rtricchinelli@bloombergenvironment.com

Chemical Watch

Agency lays out plan for confirming substance identity protection claims under TSCA

<https://chemicalwatch.com/76291/us-epa-issues-proposal-for-cbi-substantiation>

Kelly Franklin

Posted: April 11, 2019

The US EPA has issued a proposed rule that would establish a procedure for confirming certain confidentiality claims under TSCA.

The proposal, which was developed in accordance with the 2016 amendments to TSCA, relates to existing claims to protect as confidential business information (CBI) the specific chemical identity of an active substance.

There are 7,757 active confidential substances, according to the 19 February update to the TSCA inventory.

The EPA is required to put a final rule in place within one year of publishing its updated 'active-inactive inventory', outlining how companies must substantiate these claims. The agency then must complete reviews of that substantiation within five years, or by 19 February 2024.

The procedure applies to companies that asserted a confidentiality claim during the 2017-18 inventory notification reporting process ('inventory reset') in a Notice of Activity (NOA) Form A submission.

The EPA has proposed to exempt claims that have otherwise been substantiated in the past five years. But companies would still need to report and identify these past submissions to the agency.

Substantiation process

The EPA has proposed to require that all substantiation, or request for exemption, be filed electronically no later than 90 days after the final rule takes effect.

The types of substantiation required to demonstrate the confidentiality claim include:

- demonstration that disclosure of the information would likely result in substantial competitive harm;
- steps the business has taken to protect the confidential information;
- outcomes of previous confidentiality determinations by the EPA, other federal agencies or a court; and
- a statement certifying the accuracy of the information.

The agency plans to review submissions – together with previously issued confidentiality determinations and other reasonably available information – to "determine the information's entitlement to confidential treatment".

Approved claims will be valid for a ten-year period. If, however, the EPA denies a claim, it would notify the submitter of its intent to disclose a chemical identity 30 days before doing so. Submitters could challenge a denial in court.

For those claims that are not notified within the 90-day timeframe, the EPA is proposing to consider them "deficient" and to make those chemical identities public without further notice. The agency, however, has requested comment on the validity of this, particularly for those cases where a party may have substantiated the claim within the past five years but simply failed to notify them.

Review procedure

The EPA says it intends to complete its reviews by the 2024 deadline. It will set annual goals that "take into consideration this target completion date, the number of claims needing review and available resources."

And it said it may begin reviewing claims that were already voluntarily substantiated during the inventory reset process (subject to the outcome of pending litigation on that rule – see box), or for those substances that "appear to be clearly not entitled to protection from disclosure based upon other information," even before the final rule takes effect.

The agency plans to publish annual updates on its goals and completed reviews.

Although there is the possibility of a two-year extension, it does not currently anticipate a need for it; however, "possible justifications" for an extension might include competing TSCA obligations or litigation over the process.

There will be a 60-day comment period on the proposed rule.

Outcome of CBI litigation looms

Even as the EPA's CBI procedure takes shape, litigation is ongoing over its treatment of confidentiality under the amended TSCA.

The Environmental Defense Fund sued the agency over its inventory notification rule in 2017, alleging that the rule inappropriately allowed any person to maintain an existing confidentiality claim, regardless of whether they were the original claimant.

The EPA has defended in court, however, that its interpretation of the statute was "reasonable". Oral arguments in the case were heard last autumn, with a ruling possible before the year's end.

E&E News

EPA's confidentiality proposal lacks key details, greens say

<https://www.eenews.net/greenwire/2019/04/11/stories/1060154313>

Corbin Hiar

Posted: April 11, 2019

EPA's new plan for verifying chemicals that companies claim as trade secrets has some of the same shortcomings as a previous regulation currently tangled in litigation, according to critics.

The draft rule would allow companies that claimed data about specific chemicals they used or sold in the past five years as confidential business information to seek permission from EPA to continue limiting public scrutiny of those compounds for up to a decade. There are currently around 41,000 chemicals that EPA has determined are currently used in commerce, about 8,000 of which companies have claimed as confidential.

To substantiate those confidential claims, the proposal says chemical producers and users will need to prove to EPA that they've tightly held information about the compounds they're seeking to keep secret and that disclosing such chemical data more broadly would "likely result in substantial harm" to business.

"We continue to be committed to fostering transparency about information on chemicals while protecting verified confidential information," Alexandra Dunn, EPA's assistant administrator for chemical safety, said in a statement yesterday.

"With this proposed rule, we are meeting another obligation under TSCA, as amended by the Frank R. Lautenberg Chemical Safety Act," she said, referring to the Toxic Substances Control Act of 1976 and the law that overhauled it for the first time 40 years later.

The agency will accept comments on the confidential business information proposal for 60 days and aims to finalize it later this year. By law, the agency has until Feb. 19, 2024, to finish vetting the confidential claims associated with existing chemicals.

Richard Denison, the Environmental Defense Fund's lead senior scientist, plans to criticize the proposal's alleged failure to address a Lautenberg law requirement that chemicals claimed as confidential can't be reverse-engineered and the lack of information about how EPA will deal with confidential business information claims for chemicals that other companies have already made public.

The environmental group is currently suing the agency over similar perceived confidentiality deficiencies in EPA's process for determining which chemicals are in commerce.

If the proposal were to take effect without major changes, "the concern would be that more of the chemicals on the TSCA inventory would remain confidential and that would deny that info to the public," Denison said in an interview. "Every one of those chemicals is a chemical that is on the market, being used, to which people may be being exposed without the ability of the public to know even the identity of the chemical."

Law 360

EPA Rule Would Control If Cos. Can Keep Chemicals Secret

<https://www.law360.com/articles/1148834/epa-rule-would-control-if-cos-can-keep-chemicals-secret>

Staff

Posted: 7:59pm, April 10, 2019

no subscription to Law 360

Lead

E&E News

Bills aim to protect military families from lead

<https://www.eenews.net/greenwire/2019/04/11/stories/1060154279>

Courtney Columbus

Posted: April 11, 2019

Military families at Fort Bragg, N.C., in August 2009. Spc. Michael J. MacLeod/Army

New legislation in the House and Senate aims to keep military families safe from lead exposure.

The bills, from Sens. Tammy Duckworth (D-Ill.) and Gary Peters (D-Mich.) along with Reps. Jackie Speier (D-Calif.) and Dan Kildee (D-Mich.), would allow third parties to test homes on military bases for lead-based paint.

It would also require testing for lead-based paint and lead in drinking water in schools run by the Department of Defense, as well as ensure DOD is complying with federal regulations for inspecting lead-based paint.

If lead is detected in a school, the legislation would require notifying the parents of students who attend the school and taking mitigation measures.

The legislation also lays out steps for testing at-risk children for lead, and it would prohibit the military from discouraging lead inspections.

Advertisement

Last year, Reuters reported on the risks of exposure to lead faced by families — especially children — living on military bases.

"The brave men and women who serve in our military should not have to worry about whether they live in homes that put their families' safety at risk and whether they're sending their children to schools that have contaminated drinking water," Duckworth said in a statement. "This is a public health crisis and a serious threat to our military readiness that demands our immediate attention."

There is no safe level of lead in children, according to the Centers for Disease Control and Prevention.

"The military's response to lead contamination in base housing and schools is appalling. Lead can cause developmental damage in children. This is not how any family should be treated but it's even more egregious given the sacrifices their families undertake," Speier said in a statement. She is chairwoman of the House Armed Services Subcommittee on Military Personnel.

Glyphosate

Greenmatters.com

The States That Use the Most Glyphosate – And What You Can Do About It

<https://www.greenmatters.com/p/states-with-most-glyphosate>

Sophie Hirsh

Posted: April 10, 2019

The herbicide glyphosate has been the subject of some major lawsuits over the past few years. *Weed Killer Crisis*, a website dedicated to documenting the "unfolding legal and health crisis" surrounding pesticides and herbicides, recently compiled government data on glyphosate and other agricultural chemicals around the country into easy-to-read visuals, to inform the public on pesticide use in their states.

It's pretty interesting to see the statistics, which reveal the states with the highest (and lowest) concentrations of possibly carcinogenic glyphosate. And while seeing your state towards the top of the list may make you feel a bit hopeless, there are luckily plenty of ways to combat the use of glyphosate in your state.

For the visuals, *Weed Killer Crisis* got its data from the U.S. Geological Survey's (USGS) 2016 Estimated Annual Agricultural Pesticide Use report. The visuals measure (in kilograms) which states use the most glyphosate across the nation, and found that Illinois came out on top, using more than 11 million kilograms a year. The midwestern state is followed by Iowa, Nebraska, Kansas, and North Dakota. The state with the least glyphosate use by kilogram is Rhode Island, followed by New Hampshire, Massachusetts, Maine, and Connecticut.

New Times San Luis Obispo

Let's ban glyphosate

<https://www.newtimesslo.com/sanluisobispo/lets-ban-glyphosate/Content?oid=8217004>

Ethel Landers, Arroyo Grande

Posted: April 11, 2019

Remember, as a child, how we delighted when we saw dandelions in the lawn? Possibly our parents gave us an allowance if we pulled them with a tool. Remember how weeds would pop up in the sidewalk and we'd use a knife to clear them from the cracks? It took time. We had to bend over. We had to use a tool. It took labor and we burned calories.

Then, in the 1970s (and to the demise of health and the possible death of untold people and animals), Monsanto convinced us they had a better idea. Roundup, aka glyphosate, became our savior. Why do manual labor when we can spray Roundup—glyphosate? Why hire laborers to till or hoe when you can hire far fewer laborers to spray Roundup—glyphosate?

Around 2000, Monsanto's patent expired, and now glyphosate is ubiquitous and marketed under numerous names. Glyphosate is now estimated to be throughout our food chain, in every brand of California wine, and now seeping into our water supply. Poison now penetrates our systems and causes untold negative results.

In early April, Los Angeles County supervisors placed a moratorium on the use of glyphosate until the effect on health is better understood. It's time for San Luis Obispo and Santa Barbara counties to do the same. Poison kills weeds, animals, people—our earth.

NPR

As Weeks Outsmart the Latest Weedkillers, Farmers Are Running Out Of Easy Options

<https://www.npr.org/sections/thesalt/2019/04/11/710229186/as-weeds-outsmart-the-latest-weedkillers-farmers-are-running-out-of-options>

Dan Charles

Posted: 5:12am, April 11, 2019

There was a moment, about 20 years ago, when farmers thought that they'd finally defeated weeds forever.

Biotech companies had given them a new weapon: genetically engineered crops that could tolerate doses of the herbicide glyphosate, also known by its trade name, Roundup. Farmers could spray this chemical right over their crops, eliminate the weeds, and the crops were fine.

Stanley Culpepper remembers that moment. He'd left his family's farm to study weed science at North Carolina State University. "I was trained by some really, really amazing people," he says, "and I was even trained that there would never be a weed that was resistant to Roundup."

These scientists believed that plants couldn't become immune to Roundup because it required too big of a change in a plant's biology.

In 2005, though, Culpepper reported that he'd found some weeds that Roundup could not kill. They were growing in a field in Georgia. And this was not just any weed. It was a kind of monster weed called Palmer amaranth, or pigweed. Over the following years, these glyphosate-resistant pigweeds spread like a plague across America's farmland. They're practically everywhere in the South now and increasingly common in the Midwest.

"The impact is just unbelievable," Culpepper says. "We've invested over \$1.2 billion, just in the cotton industry, for control of glyphosate-resistant Palmer amaranth since we first discovered it."

So biotech companies rolled out a new answer: new genetically engineered varieties of soybeans and cotton that can tolerate two other herbicides, called dicamba and 2,4-D. Farmers can plant these crops and then spray those chemicals, often in addition to glyphosate, to kill their weeds.

There's a lot riding on these new products, for farmers and for pesticide companies. Dicamba-tolerant crops, in particular, have provoked controversy. But now, even before they've been fully launched, there's evidence that this weed-killing tactic may be starting to fail.

The evidence is sitting in a greenhouse at Kansas State University, carefully tended by Chandrima Shyam, a graduate student there.

"These are plants that were sprayed with 2,4-D. And these are the resistant plants," she says. "You can see that the resistant plants are pretty vigorous."

I see trays and trays of green, flourishing pigweeds. They are the offspring of weeds that another Kansas State scientist, Dallas Peterson, noticed last summer in a field where he conducts research. They seemed to survive every chemical he threw at them.

"We were just not able to control or kill those weeds following those herbicide applications," he says.

He called in a colleague who specializes in research on herbicide resistance, Mithila Jugulam, who in turn enlisted Shyam's help.

"So we went to the field. We dug out the whole plants, brought them to the greenhouse and kept them in isolation," Shyam says.

They grew 10 Palmer amaranth plants until they produced seeds, then replanted those seeds to produce new generations of plants in order to study them. They found that these pigweeds can survive sprays of 2,4-D. Some plants also appear to be immune to dicamba, although that still needs to be confirmed. The plants probably are resistant to glyphosate as well.

Basically, they're a farmer's nightmare. And if they showed up in one field, they're probably in other fields, too.

Culpepper, at the University of Georgia, says he's not surprised. Nobody should be surprised anymore by the superpowers of pigweed, he says. "I'm telling you, as a weed scientist, it's just an absolutely fascinating plant," he says. "You have to respect it, and the first thing to respect it is, [know that] this plant will outsmart me if I do the same thing over and over again."

Culpepper tells farmers that they still can control this superweed, but they need to use a bunch of different tools. That means deploying multiple chemicals, alternating the crops that they plant, and planting extra "cover crops" in the off season to cover the soil and make it harder for weeds to emerge.

Matt Coley, a farmer in Vienna, Ga., says most growers learned a lot from their experience losing Roundup as a cure-all for weeds. "As long as we continue to follow the recommendations not to rely just on one chemistry, I think we'll continue to be able to manage pigweed," he says.

But dicamba and 2,4-D are among the herbicides he uses on his cotton crop, and he admits it's a little unsettling to hear about Palmer amaranth plants that these chemicals won't kill. He's hoping for new weapons in his arsenal. "The industry, the manufacturers — for them to be in business, they've got to have farmers," he says. "Hopefully they're utilizing their research and development to continue to provide us with products that will help us control our pests in our crops."

The arsenal is running out, though. And that's what worries Culpepper the most. "We haven't had a new way to kill a weed with a herbicide since 1984," he says.

Meanwhile, weeds like Palmer amaranth and ryegrass have been defeating one chemical after another. "This is a monumental challenge we're facing. Is dicamba- and 2,4-D-resistant pigweed surprising? No," he says. "[But] the overall issue with resistance is flat-out overwhelming."

PoliticoPro

Perdue defends glyphosate again, attacking Vietnam's ban

<https://subscriber.politicopro.com/article/2019/04/perdue-defends-glyphosate-again-attacking-vietnams-ban-3068253>

Liz Crampton

Posted: 10:25am, April 11, 2019

Agriculture Secretary Sonny Perdue stepped up his defense of glyphosate today by condemning Vietnam's ban of the herbicide, saying the move will "have devastating impacts on global agricultural production."

Vietnam's Ministry of Agriculture and Rural Development this week decided to forbid use of glyphosate based on some scientific studies that suggest the chemical used to fight weeds in farms and lawns causes cancer. Two juries in California have also recently issued multimillion-dollar verdicts against Bayer, the manufacturer of the popular weedkiller Roundup, which contains glyphosate.

Earlier this week, Perdue told members of the House Appropriations agriculture panel that it would be "devastating" if Bayer decides to pull glyphosate from the market. Bayer has insisted that the chemical is safe, citing numerous studies from public health authorities such as the EPA.

"This ban flies on the face of that scientific evidence," Perdue said about Vietnam's decision. The decision goes into effect 60 days from the announcement and will ban imports of herbicides containing glyphosate.

"Vietnam also needs to look at the potential ramifications for its own farmers," he continued. "In addition to the immediate effect of slowing the development of Vietnamese agricultural production, there's the very real risk that Vietnam's farmers will turn to unregulated, illegal chemical products in place of glyphosate."

Bayer's shares have dropped in the aftermath of the U.S. verdicts, angering some investors that say the company didn't fully account for the legal risk of purchasing Monsanto, the developer of Roundup.

One of Bayer's largest shareholders, Deka, publicly criticized the merger this week, saying Bayer underestimated the legal exposure it would face. Thousands more federal and state cases claiming glyphosate is to blame for cancer are awaiting their turn in court.

Toxics

Chemical Watch

Precise GenX mechanism of toxicity eludes EPA scientists

<https://chemicalwatch.com/76146/precise-genx-mechanism-of-toxicity-eludes-epa-scientists>

Staff

Posted: April 11, 2019

US scientists have failed to prove that the mechanism of toxicity for GenX compound HFPO-DA is the same as for PFOS and PFOA, despite identifying some similarities.

Their study of rats suggests that HFPO-DA causes "extensive" changes in gene activity relating to peroxisome proliferator-activated receptor (PPAR) signalling, a biological process known to be involved in PFOS and PFOA toxicity.

A team from the EPA and the National Institutes of Health (NIH) exposed pregnant rats to HFPO-DA and looked for changes in both the mothers and their offspring.

They found that GenX activated PPAR signalling pathways in maternal and foetal livers. The mothers had heavier livers, as well as lower levels of fats and thyroid hormones in their blood. The female pups had lower body weights and the males lower weights for their reproductive tissues.

Reduced pup weight "appears to be one of the most sensitive endpoints of *in utero* PFAS studies", and should be "more extensively evaluated for HFPO-DA exposure", write the researchers.

PFOS and PFOA affect in particular the alpha PPAR. However, the effects of HFPO-DA seen in the study cannot be ascribed solely to PPARalpha, the scientists say in their paper, published in *Environmental Health Perspectives* last week. "Although findings in this study are consistent with other PPARalpha agonists ... data gaps exist for key events and other mechanisms that might be involved, particularly in other tissues besides those like the liver with high PPARalpha levels."

Led by Justin Conley from the EPA's Office of Research and Development, the researchers call for "extensive research" into possible toxicity mechanisms as well as studies into mixtures of multiple PFASs.

Worldwide water

GenX is a later generation, short-chain PFAS. It has been detected in river water worldwide and there are concerns over its persistence and mobility.

The EPA classifies the chemical as an "emerging contaminant" in need of more research. The agency has indicated that oral exposure to GenX – such as through drinking water – could impact the thyroid, reproductive organs and tissues, developing foetuses, and the kidney.

Germany and the Netherlands are evaluating GenX under the Community Rolling Action Plan (Corap) because of concerns over environmental exposure and persistent, bioaccumulative and toxic (PBT) properties.

Echa's Member State Committee has agreed that further information is needed for the evaluation, including a biomonitoring study of volunteer workers at a GenX plant, and a carcinogenicity study in mice. In its substance evaluation decision, Echa describes PPARalpha as "the most extensively studied signal pathway behind PFOA induced carcinogenicity". However, it outlines areas of uncertainty relating to PPARalpha mechanisms.

Chemical Watch

Researchers urge more protection for workers from organic flame retardants

<https://chemicalwatch.com/76293/researchers-urge-more-protection-for-workers-from-organic-flame-retardants>

Maria Delaney

Posted: April 11, 2019

More attention should be given to protecting workers exposed to organic flame retardants, according to new research. The workers most at risk are identified as electronic waste recycling staff, electronic manufacturers, firefighters and aircraft personnel.

Organic flame retardants (FRs) are added to many common goods and some, such as polybrominated diphenyl ethers, are toxic. While many of these toxic products have been removed from the market, legacy goods are still present in workplaces, the researchers report in the UK's *Annals of work exposures and health*.

One issue with exposure to FRs is that the effects are not instantly noticeable to workers because they do not irritate the lungs.

"Some have been shown to be associated with endocrine disruption, which can have detrimental effects on health," according to the lead author, Sabrina Gravel from the Institut de Recherche Robert-Sauvé en Santé et en Sécurité du Travail (IRSST) and the Department of Environmental and Occupational Health at the University of Montreal.

In order to replace toxic FRs, manufacturers are using compounds such as organophosphate esters (OPEs) and novel brominated substances. The review, *Assessment of occupational exposure to organic flame retardants*, recommends that the toxicity of these newer substances should be further evaluated. "The industry is coming up with new substances faster than we can study them," added Ms Gravel. "We don't know with very solid evidence what the potential toxic effects are."

The review also found a lot of inconsistency in the methods used to measure workers' exposure. This needs to be addressed, according to Ms Gravel, who recommends that more standardised procedures are used across industry for air and dust sampling.

Knowledge of exposure pathways also allows better protection of workers. Inhalation is the main pathway researched for FR exposure but the review states that other pathways, such as involuntary ingestion and skin permeation, need more research.

The findings of another project by the IRSST, which looked at the effect of FR exposure in electronic waste recycling, will be published in the coming months. It recommends engineering controls such as ventilation to reduce the amount of dust in the air. "Protective equipment is always recommended when you have airborne particles, but it's the least effective control measure," Ms Gravel added.

Note: Your access to this subscriber-only article is through a corporate subscription

Message

From: Bahadori, Tina [Bahadori.Tina@epa.gov]
Sent: 4/10/2019 10:12:32 AM
To: Dunn, Alexandra [dunn.alexandra@epa.gov]
CC: Beck, Nancy [Beck.Nancy@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Hartman, Mark [Hartman.Mark@epa.gov]; Lavoie, Emma [Lavoie.Emma@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]
Subject: RE: NCEA TSCA Risk Evaluation Support-- Weekly Update

Thanks Alex. Lek, please let me know if you need anything else from us. NCEA's Emma Lavoie, copied on these emails, has custom-tailored our support to fit OPPT's real-time needs. We will be glad to recalibrate as needed – especially if we can have a more panoramic understanding of your strategy to meet the deadlines for the first 10. We are also eager to help workflow/resource planning for the next 20.

Tina

From: Dunn, Alexandra
Sent: Wednesday, April 10, 2019 5:45 AM
To: Bahadori, Tina <Bahadori.Tina@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Hartman, Mark <Hartman.Mark@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>; Kadeli, Lek <Kadeli.Lek@epa.gov>
Subject: Re: NCEA TSCA Risk Evaluation Support-- Weekly Update

Thank you Tina. This is helpful. Adding Lek who is helping on our staffing and resource plan.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, DC

Sent from my iPhone

On Apr 10, 2019, at 5:20 AM, Bahadori, Tina <Bahadori.Tina@epa.gov> wrote:

Good Morning,

Sharing progress for your information --

NCEA TSCA Risk Evaluation Support 04/10 Update. Expert consultation on trichloroethylene (TCE) developmental toxicity regarding a new study and overall weight of evidence was provided to the Office of Pollution Prevention and Toxics (OPPT)/Risk Assessment Division (RAD) this week. Work on the weight of evidence and evidence integration for cancer and non-cancer sections for carbon tetrachloride is being finalized this week. Staff are also supporting methylene chloride, trichloroethylene, and perchloroethylene human health characterizations with consultation on analysis techniques including meta-analyses. Leonid Kopylev and Tom Bateson are playing a key role in delivering an initial draft human health risk evaluation this Friday for asbestos. Study evaluations and associated quality control continue. The schedule for the nine risk evaluations currently being drafted is: 1,4-dioxane hexabromocyclododecane (HBCD) expected in Agency review this week; the schedules for the six solvents and asbestos are broken into two groups with 1-Bromopropane, methylene chloride, N-methyl-2-pyrrolidone (NMP) and asbestos in group two, then TCE, perchloroethylene (PERC) and carbon

tetrachloride in group three. HERO staff continue supporting risk evaluations and are planning for future needs.

Tina

From: Bahadori, Tina

Sent: Wednesday, April 3, 2019 10:12 AM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Cc: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Hartman, Mark <Hartman.Mark@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>

Subject: RE: NCEA TSCA Risk Evaluation Support-- Weekly Update

Good Morning,

Sharing for your information:

NCEA TSCA Support 04/03/19 Update. A small group of ORD experts from National Center for Computational Toxicology (NCCT), National Health and Environmental Effects Research Laboratory (NHEERL), and NCEA discussed trichloroethylene (TCE) and developmental toxicity with the Office of Pollution Prevention and Toxics (OPPT)/Risk Assessment Division (RAD) last week and are preparing some written comments. NCEA team provided work on 1,4-dioxane cancer mode of action and weight of evidence. Work on the weight of evidence and evidence integration for cancer and non-cancer sections for carbon tetrachloride continues. Staff are also supporting methylene chloride, trichloroethylene, and perchloroethylene human health characterizations. Support on the asbestos workgroup continues with NCEA staff an integral part of the human health team. Study evaluations and associated quality control continue. The schedule for the nine risk evaluations currently being drafted is: 1,4-dioxane and HBCD first going to Agency review at end of April; the schedules for the six solvents and asbestos are being adjusted.

Tina

From: Bahadori, Tina

Sent: Wednesday, March 27, 2019 5:40 AM

To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Cc: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Hartman, Mark <Hartman.Mark@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>

Subject: NCEA TSCA Risk Evaluation Support-- Weekly Update

Good Morning,

Sharing for your information: